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FOREIGN INFLUENCE IN THE UNITED STATES

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BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

FOREIGN INFLUENCE IN THE UNITED STATES

SEPTEMBER 27, 1990

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FOREIGN INFLUENCE IN THE UNITED STATES

THURSDAY, SEPTEMBER 27, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m., in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings [Chairman of the Committee] presiding.

Staff members assigned to this hearing: Loretta Dunn and Ivan Schlager, staff counsel, and Fiona Branton, minority staff counsel.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The Committee will come to order.

We had our fund raisers last evening, and while we raised the funds we have not raised the Senators yet this morning.

Mr. Choate, will you come around, please, sir?

While he is coming around, the picture has materially changed here in the last 40 years. After World War II it was an affirmative action plan of the United States to foster the development, industrially and economically, of not only our former allies in Europe, but our adversaries in Europe and in the Pacific as well, with our Marshall Plan, our tax money, our expertise, and our technology. We sent them abroad, and it worked. No one regrets that. Part and parcel of it, of course, was to send all of the advice and counsel we could give.

If in the 1950's and 1960's, if a representative of the Federal Government left to work for Japan or Japanese entities in competition with the United States industrially or economically, that was thought to be fine because that was the policy of the government.

Now as I say, the picture has changed, and we have moved from the Cold War to the trade war. We are very much concerned and disturbed with the export, more or less, of our industrial backbone and the closing-out of competition through dumping subsidies, and other protectionist measures by our adversaries. I have felt through my experience up here time and again that the crowd that should be working for us is working for the other side. To put it bluntly, to have someone leave, for example, the U.S. Trade Representative position, the Ambassador for International Trade, and then go to work for the Japanese would be like Colin Powell leaving to represent Saddam Hussein tomorrow. It is that kind of situation.

I do not believe anybody in our military would leave to represent the other side, and when they do that, after having gained the experience and intimate knowledge, perhaps proprietary knowledge of our government, and then starting working immediately for the other side that raises grave questions not only of ethics and propriety but the continuation of the control over our own industrial policies.

Fortunately, I believe Mr. Pat Choate here has documented this—and I have not read the book. I have scanned some parts. I have talked to everyone I can find, Mr. Choate, other than yourself.

This committee has had previous hearings with the likes of Clyde Prestowitz and others and both sides. That is our intent today, to have a distinguished American who has served in the government in many capacities perhaps of honor and trust, Secretary Richardson, who will give his insight from, that particular perspective.

So with that said, I appreciate having the attendance of our colleagues here, and let me yield to Senator Exon before we hear from Mr. Choate.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. Mr. Chairman, thank you very much.

Pat, congratulations on a very eye-opening book that I just had a chance to scan briefly. I expect your revelations may shake this town hopefully into some reality. The American people need to know that day by day and minute by minute their Nation's economic independence is simply slipping away. America's craving for debt has placed increasing amounts of bonds in the hands of foreign interests. American companies which represent the seed corn of the future prosperity are being sold to foreign buyers in record numbers. A whole host of military systems unfortunately depend today upon foreign components if we expect them to work.

As a frequent critic of the Japanese economic policy, I do not fully blame the Japanese for the current situation or their agents of influence. You point out time and time again in your book that the Japanese activities in the United States have been by and large legal. The fault, in my opinion, lies with those who are influenced right here in Washington, D.C.

We have taken some steps, I think, that you know of to try to correct this, but right at this particular time a very important piece of legislation that I introduced on behalf of the administration to help the administration get information from the different bureaucracies of the Federal Government is being held up by a hold in the United States Senate after it was cleared on the Democratic side.

I do not understand why we are so patient to do what needs to be done and at least begin to give the administration the tools that it so desperately needs.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator FORD. I have no statement, Mr. Chairman. I thank you for the opportunity.

Senator GORE. No statement, Mr. Chairman.

The CHAIRMAN. Very good.

STATEMENT OF PAT CHOATE, AUTHOR

Mr. CHOATE. Mr. Chairman, thank you very much. I am very honored and pleased to have the opportunity to once again appear before this committee. At my last appearance here several months ago, the topic was the substance of competitiveness, the things that American business and American government and American workers need to do.

This morning I would like to speak to you about the questions of the politics of competitiveness, and I want to make very clear that the substance of what I am talking about is really not about free trade versus fair trade. It is not whether foreign investment is good or bad for the United States. It is really the question of political influence in the economic process. It is the question of political advantage, whether or not it is possible to win in the back halls of government what cannot be won in the open marketplace.

In my particular study of this issue, I have chosen to use Japan to illustrate a larger point. Again, I want to point out that if one, for example, wishes to really understand what a good vocational technical training system can be, one can go to Germany and see a first-class system. If one really wants to see what our train system and Amtraks can be, one can go to Japan and take a look at the bullet train system.

By looking at how others approach an issue, I think it often gives clarity to seeing ourselves, and that is what I have done in this particular study.

I would also note that within our own society, given our own culture, there is a very striking disengagement between American business and American politics, but what is also intriguing about that, at least according to the Harvard Business Review, is we have come to a point where up to 50 percent of the decisions that are made by American corporations are made in response to some decision of government.

The decisions and policies of government are very important. In Europe and Asia corporate executives understand that. For those CEO's, what we find is a circumstance where half or more of their time is shaped to an involvement with their government and their political leaders to shape the external environment in which their enterprises operate.

It is precisely the opposite here. The A. T. Kearney Company has done a major survey of 150 major American manufacturing corporations, and what they find is that only 28 percent of the top officers of those companies devote any time whatsoever to interacting with the leaders in government such as yourself to shape the external environment in which their enterprise operate.

Now in the past when America had an easy superiority in its economics, that difference was of little consequence. It is of enormous consequence today because what we find is a competitive environment in which competitors in Europe and Asia understand that it is an essential element of their competitiveness to be able to control, if not influence, the actions of their own government and, to the extent possible, to be able to at least make their points of view known or influence the governments of their competitors in their home base. Now what that means to me is this, American companies believe and proceed on the basis that if they do everything right economically, if they have a better price, better quality, better technology, better innovation and aggressive marketing, that is all they need to do.

And what I am pointing out in this book is that doing everything right economically is not enough. There is now a sixth dimension and that sixth dimension is the political dimension, and I am further pointing out that our competitors and primarily the Japanese, but others as well, have systematically blended the political strategies with their economic strategies to gain economic advantage.

What they do is entirely legal. It plays the game by American rules, but it also, I think, raises very interesting, if not serious questions about the nature and the form of that representation, and here again, I think the issue has to become one. We are not talking about denying others the right to representation, because that is the American way. It is the question of the nature and form of that representation. As I began my study, the first thing that I at least wanted to understand was the mindset of how our competitors use politics for economic advantage.

So I went to Japan and I spent time with Japanese politicians and political analysts and advisors, and what emerged from that is a rather interesting position that suggests that money politics in Japan is practiced on a dimension that we do not understand in this country.

There are in essence three centers of power there. There is the bureaucracy, there are the politicians and there are the special interest groups, and one of the ways that the special interest groups gain power with the political system is through contributions of enormous amounts of monies.

And let me just give some numbers, to give a relative figure. In 1988, our elections in this country, the Presidential primaries, the Presidential elections, the House races, the Senate races, cost somewhere in the neighborhood of $900 million.

When one takes a look at the Japanese election of last February and the year that preceded it, the Japanese spent roughly $4 billion. Now let me put this into context. Here is a society with half of our population that is spending roughly four and one-half times as much as we are. On a per capita basis, it means nine times as much money.

Now the cost of our own politics is expensive, but just imagine what it would be like having to raise nine times more money in these political activities.

There is another fundamental difference in the Japanese political system, and in that system, for example, the Diet, for example, is consisted, obviously, of elected officials. It has enormous power. Each Diet member, however, is given only enough money to hire two or three staffers. Each member of the Diet requires a minimum of 16 or 18 staffers.

It is thus necessary for the members of that political system to go out and raise money to hire the balance of their staff. What that means, according to observers in Japan that I interviewed is that a freshman member of the Diet must go out and raise $1.3 million or $1.5 million each year.

A mid-term member or a middle level member must raise $2 million or $3 million or $4 million and a senior member must raise many times more than that. What it really means is that the business interests have a disproportionate influence not only because of their political contributions, but because they help finance the staffing of the politicians within Japan.

The Japanese business community is fully accustomed to making these kinds of political investments. As they come to the United States, they bring with them their awareness of the political dimensions of the economic business of competitiveness.

And the way I dissect it is essentially that what a well-focused strategy of politics for competitiveness consists of is five essential elements. One is superior intelligence gathering. For example, what we see is a preponderance, I estimate 80 percent of the people in the 1,000 plus Japan lobby in this town, their primary focus is to gather intelligence, to find out what is going on in Congress, to see what ideas are being talked about, to see what are the personality interplays that are going on within an administration.

And in this book I list several examples in which the Japanese lobby and their representative would actually have a better feel for what was happening in an administration than many of the people that were serving in the administration because they had a broader net and more information flowing in.

The second level or second element of that strategy is the availability of lobbyists, and the Japanese spend a great deal of money on lobbying. They spend over $100 million a year on lobbying in this town. That is an enormous amount of money. It is equal to that of the five largest business organizations in this town combined—the Chamber, NAM, CED, The Business Roundtable and the American Business Council.

But even more important than the money, much of that lobbying is focused, obviously individual Japanese companies will be working their own issues, but by and large it is a focused lobbying activity.

The third level that we now see is what the Japanese call long-range lobbying. It is grassroots politicking. To in effect establish a capacity at the local levels, to be able to influence members through their constituencies.

The fourth element of this strategy is propaganda. All nations engage in propaganda. The U.S. and the Soviets do it for geopolitical purposes. Lock Johnson in his study of the Central Intelligence Agency estimates that perhaps as much as 40 percent of the entire CIA budget is devoted to the issue of propaganda.

The Japanese engage in propaganda as well, as any government does. Some is overt. It is to shape American views of Japan. Other parts of it are done for economic purposes.

One of those purposes is in effect to deflect criticism of Japan. As the CIA and the KGB will have themes that they use in propaganda, take a few simple messages and just hammer them over and over again in dozens of variants and hundreds of outlets, the Japanese message is essentially around six themes and they ARE. if we cannot get into the Japanese market it is America's fault; if criticism is raised by writers and analysts such as me or political officials such as you, then you therefore must be a racist or you must be engaged in Japan-bashing, in other words, to shift the criticism away from the substance and on to the critic itself.

A third issue or a deflection technique is globalization. The idea here is to promote the idea that it really does not matter who owns the corporations. It really does not matter where the headquarters are located in the world.

The fourth is that it is America's fault, that somehow or another our companies do not try hard enough, that they do not want to build quality products, that they do not have patience. In truth, what we find is hundreds of American companies, many of them in your States, produce goods and services that are in the best in the world.

They are fully competitive on any basis. Put them head-to-head with Japanese, European, Korean, Taiwanese goods in an open market in Europe or a third market and they do quite well. I mean, Americans are a very aggressively competitive people.

And the final excuse is that Japan is changing, and again the argument here is that if we will just wait just a little bit, if we will hold up just a tad, that things will take care of themselves, and a number of excuses are given to say why that is imminent.

Well, my summation is essentially this: the political dimensions of competitiveness are important. Our Japanese competitors have come, they have studied our political system. They know quite well how the game is played, they are doing a marvelous job at it. All that they are doing is legal.

They gain a substantial advantage out of the fact that large numbers of our former Government officials are willing to be their tutors and to be their voices in this town and in the press and in academic and other circles.

I document in my book that since 1972, a third of our trade negotiators, half of our USTR's and all by one of the General Counsels of the USTR have gone to work representing foreign interests when they left office.

In my study I identify 200 high-ranking former Government officials in the period January 1, 1980 through January 1, 1990 who have held major positions that determine the future of this country who have subsequently left office and have become lobbyists for foreign interests that have represented with the Justice Department.

And I tell you very candidly, I just as easily could have identified 400-plus people; the limitation I faced was the limitation of space given to me by my publisher. It takes 50 pages in my book alone just that particular documentation. I think that this revolving door is ultimately corrosive. I think that in the final analysis what it does is it creates a circumstance that makes it very difficult for America to honestly talk about its future, because so many of the people that ultimately sat at the table when the decisions are being discussed and at debates outside of Congress and in the policy and other communities are paid to represent a foreign view or a view that may not necessarily be in the American interest, and in many cases it may be.

I think in the final analysis, it is incumbent upon both our political system and upon our economic system and our business leaders to understand the political dimensions of what is happening.

I do think that your bill, Senator Hollings will go far in bringing sunshine into what is happening, and I think in politics, sunshine is a very important element. I think it is ultimately the best disinfectant in dealing with this issue.

I think it will slow the revolving door which badly needs to be done, and I think more important, it will make it known to everyone for whom everyone is speaking and that is necessary.

My final comment is this. After taking a look at this issue for almost 3 years, what I have concluded and what you will find in my study is this is not a partisan issue ultimately. I have specifically and deliberately, for every Democrat that is identified in my book, I identify a Republican.

This is also not an ideological issue. For every liberal I identify a conservative. This is ultimately and in the final analysis a question of how do we wish to practice democracy in this country.

And so with that, let me end my formal statements, and I would be pleased to respond to any questions that you might have, sir.

The CHAIRMAN. Let me just say first for the benefit of the committee members, our colleague, Senator Bryan, and I introduced on Monday the Foreign Representation Act of 1990, an update of FARA from 1938 that Mr. Choate has referred to. We have some outstanding bill witnesses here, and if we have time we will be getting into that in detail.

I want to say, Mr. Choate, that you in a very short time have painted a very comprehensive picture of exactly what has been going on. For my 24, almost 25, years experience, I could write one of those books.

We have the exporter sales price offset over in the Commerce Department, trying to determine a dumping case as to whether or not the article is being sold in the American market at a dumped price; namely, cheaper than the domestic market, say, in Tokyo. Our Commerce Department continually adds the sales, promotion, all the TV, radio and everything else, to the U.S. price and adds the salaries of the people here working for the related party.

I got a vote of 100 to 0 to do away with that because they do not do that in Canada; they do not do that in Europe or Australia. Oh, I could see the Japanese network going to work. Even though we could pass it 100 to 0, it was dropped in conference. We had the 1988 Trade Reform Act where we got Super 301 and all just the year before last. So I see it, and I feel it.

I want to make clear, through the certitude of your research and what you charge or expose in this book. How thoroughly did you check everything in this book?

Mr. CHOATE. Very thoroughly. One-third of the book is documentation. In the appendix I relied upon the Foreign Agent Registration Act. This is based simply upon the filings where people have signed the documents registering with the Justice Department. In the balance of the studies I relied upon the physical documents that were available.

The CHAIRMAN. Well, Mr. Choate, I saw my friend, Ambassador Robert Strauss, last evening. Listening to him, as I understood it, everything you said in here referring to him was false. Do you want to elaborate him?

I asked him if he wanted to come and testify.

What do you charge in here? I was trying to look this morning in the book about a secret letter and his negotiating ability. How can you substantiate what you have in here in reference to former Ambassador Robert Strauss?

Mr. CHOATE. Well, what I tell in this particular chapter, it is the issue of how the Japanese formed a cartel in the 1950's specifically designed to capture a major share of the American television industry. Part of those records come from the Japanese Government, from studies by the Japanese Fair Trade Commission itself, which found the existence of such a cartel and ordered the Japanese manufacturers to cease and desist but found themselves in a circumstance where the Japanese antitrust procompetitive laws were not enforced. It was a benign activity.

Secondly, what I have been able to trace out through the government records is that the Japanese were engaged in dumping. This is information and official records from Treasury, Commerce, and the International Trade Commission.

The Justice Department found that Japanese firms were engaged in falsifying their receipts on the imports of American televisions; that they were paying secret rebates, illegal rebates, to 80 of their particular customers, using that as the basis to gain competitive market share.

We also find from the findings of the Commerce Department and from hearings that have been done in the House that the Japanese were closing the markets on the same set, enabling their firms to gain a decisive competitive advantage. The same 19-inch set that was selling for $300 here was selling in Japan for over $700. Those profits were then being used to subsidize the production or the sale at below-production price here within the United States.

What happened is from 1968 to 1976 we went from 28 domestically-owned firms in this country to 6 domestically-owned firms in this country. What we saw during the early and mid 1970's is the dumping laws in this country simply were not aggressively enforced; neither were the countervailing duties, the statutes that existed there. The Justice Department was unaware of this secret rebate scheme.

The Japanese in April of 1977 at the beginning of the Carter administration engaged the services of a former Deputy Trade Negotiator. He was paid $300,000 for 90 days' work to help effect an arrangement as part of the orderly marketing agreement. What happened is in those early days of the Carter administration, it was pushing very hard for the purpose of insuring that the Japanese would stay in the GATT negotiation. The Carter administration made an arrangement, and the essence of that arrangement was that the matter on televisions would be settled expeditiously. It was done in a side letter. The protocol is very clear. A photo of the letter is in the book.

That, in essence, created a circumstance, Mr. Chairman, in which the U.S. moved on a track where ultimately we settled out what could probably have been

$1 billion worth of antidumping duties as of last spring to collect roughly $16 million. The U.S. Government went all the way to the Supreme Court on the side of the Japanese manufacturers against Zenith Corporation in a countervailing duty case. When Zenith and National Union Electric operating under the name of Emerson filed an antitrust suit, the U.S. Government up through 1986-1987 filed a friend-of-the-court brief on the side of the Japanese.

It was agreed that the U.S. Government through the Treasury would give the Japanese advance information of all that would be done in subsequent tracing out of the records through 1977, 1978, 1979 and 1980 and the meetings and notes of meetings and memoranda. That was precisely done.

In the documentation of that chapter, chapter 6, I lay out the names, the dates and the cites, and I would be very pleased to make a copy of those records available to the committee. I am very confident of what I am reporting.

The CHAIRMAN. What role did Ambassador Strauss play?

Mr. CHOATE. Ambassador Strauss had just come into office. Ambassador Strauss concluded and made the agreement that is in the book. It was a signed agreement, a side letter protocol.

The CHAIRMAN. You call it a side letter now, but in the book you call it secret. What was secret about it?

Mr. CHOATE. It was not released to the public. This was unknown.

Senator FORD. Mr. Chairman, that is absolutely incorrect. You know it is incorrect.

Mr. CHOATE. Mr. Ford, this was made available to the House Ways and Means Committee——

Senator FORD. 12 years ago there was nothing secret about that letter, and you know it.

Mr. CHOATE. Mr. Ford, the side letter was unknown to the American television industry until Mr. Rostenkowski requested that it be——

Senator FORD. Why do we have to give it to the television people? They are not running this country.

The CHAIRMAN. Wait a minute. You will get your turn.

Senator FORD. I am just getting excited.

The CHAIRMAN. Is it your point that it was not released to the public? Is that what you are saying?

Mr. CHOATE. Absolutely. The television industry and the American manufacturers and the American unions did not know this. In roughly a year-and-a-half after most of the key decisions had been made, some in the television industry became aware of this through the negotiations with the Japanese.

The Japanese were coming back saying to people in the Customs Service and in the Treasury Department that you are committed to do this, or you are committed to do that. A series of—or a group of the professional attorneys in the Customs Service actually filed a joint letter, a most extraordinary thing, that they sent to the Commissioner of Customs asking him, what is happening?

Because they themselves, who were required to enforce the law, were finding out what their own Government had agreed through the representations of the Japanese Government and through the Japanese manufacturers themselves. This then goes back to Mr. Vanik and Mr. Rostenkowski over in the House, who were pushing very hard to get the Treasury Department to collect the anti-dumping duties to offset the uncompetitive advantage.

Mr. Rostenkowsi asked Ambassador Strauss whether such a letter had been done, and Mr. Strauss put that letter into the record, and in my book I document when that was done. But I would also note, which is also very interesting, in talking to many, many people in the television industry, most are simply aware of it, even now.

The CHAIRMAN. The Customs Department was going in one direction, they found, for countervailing duties, and you are saying the Justice Department filed a brief on behalf of the Japanese against the Customs position?

Mr. CHOATE. They filed a brief on behalf—Zenith had won a countervailing duty case in a lower court. When it then moved on its way towards the Supreme Court, the Justice Department took the side of the Japanese. When the antitrust case went to the Supreme Court, what happened is, again, the U.S. Government weighed in on the side of the Japanese manufacturers against Zenith and Emerson.

The CHAIRMAN. Well, of course, the committee does not want to just try one case. You make a very interesting summation and description of—and I have said before that Ricardo's comparative advantage, free trade, free trade, each country should take advantage of its comparative advantage. He had in mind back 200 years ago the natural resources, the labor force and otherwise.

Now, as you describe it, the Government is the comparative advantage, and almost to the extreme. We have got about 10 legislators that have already been indicted—several have pleaded guilty—for having been paid to get legislation through my South Carolina General Assembly.

They are being convicted under the Hobbs Act when in truth what they really are, are Japanese politicians, just being paid to get certain bills passed. What they do in Japan, and it is a dramatic impression upon this Senator, is a crime in this country.

Let me yield to our colleagues here who have come in—Exon, Ford, Gore, Gorton, McCain and Bryan. Senator Exon?

Senator EXON. Mr. Chairman, thank you.

Pat, I do not agree with your allegations, if that is the proper term, with regard to Robert Strauss. I think he is a very dedicated, top-drawer individual, and I guess I do not quite follow why everything has to be made available to the television media on things of this nature.

I do not believe for a moment that Bob Strauss would be one to try and prevent information from going to the public. That has not been his modus operandi for the many years that I have known him, and so I am concerned about that part of you book.

But let me switch back to another subject, why I think this is a very, very good book—and there are lots of documentation that people can always take issue with, and that is a part of things. I have never read a book, except the Bible, that I believed each and every part of it, and yours is one of those.

I just wanted to return, if I might, to what is the central theme of your book, aside from how I might disagree with you on Robert Strauss, and this is one phrase which I think should be repeated over, and over, and over again in America until we have a full understanding of it.

I quote from the "Forward" portion of your book, wherein you say—and I think you emphasize that with your opening remarks here today—"in politics, as in business, Japanese strategy follows a simple and predictable pattern: protect your own domestic market from foreign penetration and capture as much of your competitor's market share as possible. The Japanese strategy succeeds largely because of fundamental political differences between Japan and America."

Among everything else, I think that is a very key phrase that we should understand in America if we are going to be, and we want to be, a Number 1 economic power in the 21st Century, which is coming on us very, very rapidly. I would like to have you comment a little bit more on that, because that is the central theme that I think we have not been successful in driving through and fully understood in America.

We go off on this tangent. We use it in agriculture. We use it in our economic models and projections. We use it over and over again, that somehow in America we produce everything the best, and at the cheapest price, and therefore we are going to prevail. There was a time, I suggest, that possibly that was true. I am not sure that all of that is completely true as we face the situation now.

This does not directly apply to Japan, because as I understand it the Japanese wage rates are coming up to where, if you compare apples with apples, the Japanese wage rates are not too significantly different than in the United States. Is that correct?

Mr. CHOATE. Yes, sir.

Senator EXON. But it is the area in which they play and which they draw from. A group of us led by Senator Hollings a few years ago visited the Pacific Rim, and I got a lesson there that I have learned very, very well, and while it is only a part of the picture, I think it is a part of the problem in that whole Pacific Rim, including the Japanese, and that was that we visited a Mattel toy factory, and—Fritz, you remember that—and after we completed our tour we had a discussion with management and we asked management how do the wage rates over here in the Pacific Rim for Mattel compare with the wage rates in your plants in the United States?

Immediately came a correction, please do not use the word "plants" with regard to our facilities in America. We only have one plant left in the United States, and that is where we build our biggest toys. Everything else is made over here.

But to answer your question, it was said that comparing apples with apples, about $9.50 an hour for our one plant left in the United States, including wages and fringe benefits, and about $1.50 an hour at this plant here in Hong Kong, and about $1.50 in South Korea, and about $1.50 in Taiwan, but in our brand-new plant in Shanghai, China, it is 25 cents an hour.

Now, these are some of the things that America has got to understand. If we want to reduce our standard of living in this country to the standard of living in Taiwan and in Hong Kong and in South Korea, then I guess we are in a position to compete, if that is what we want to do.

But this business of our markets being open to where other markets are closed, and just parity between living conditions, and that is what it is all about more than wages, could you comment on some of those things and see if you think I am on the right track?

Mr. CHOATE. I would be very pleased to.

First, I think—let me comment on your opening comments, or your earlier comments about Mr. Strauss. I think it is very important for me to note, and for others to note, that he is a very honorable, innovative and distinguished public servant.

I think it also important, as I point out in my book, that one of the things that we have seen is a natural consequence of national policies that in effect have stood prepared time and again to trade off our economic interests for defense and foreign policy issues, or to trade off specific industries such as we have done in textiles and a variety of other activities for geopolitical reasons or to gain a GATT round in the negotiations. That is what we have seen.

I think it is very dangerous, however, to not have a full airing of all of the protocols and side agreements and side letters that are made on trade arrangements in at least the intelligence community, where it is necessary at times to engage in activities that it may be useful to not have broadly known.

At least within our system of Government there is the proper oversight mechanisms formed in both a bicameral and bipartisan way. Such a mechanism does not exist in the trade arena, and one of the suggestions that I would make is that in the future that such agreements, if they are to be made, that they at least be shared with the Congress so at least the Congress could have the opportunity to see whether it should be made public and to fully evaluate it.

Senator EXON. Was it not shared with Congress?

Mr. CHOATE. No, it was not shared until a year-and-a- half after it was done. I would also say this. As to this broader competitive issue, it seems to me the points you raise, Senator Exon, are really the critical points that we now face, and that is that as we take a look to our future, what kind of an economy are we going to have here? Are we willing to make the investments in high technology goods that will provide jobs, income, and revenues for our society, or are we not? If we are going to make those kinds of investments, how are we going to deal with the fundamental nature of competition? Will we, for example, have a different structure in our antitrust laws? What we see from taking a look at Business Week and a variety of other studies is that in Europe and in Asia these companies and these societies are organized quite differently. They in effect will have banks that will own many of the major enterprises.

In Japan, we can identify over 92 formal cartels that exist, and those cartels now extend their operation inside the United States. We find American corporations at a position where they are not permitted to engage in such activities. They are left at a distinct disadvantage. So there is that question.

Should this country put money into supporting things such as semiconductors or a variety of other technologies that will define work and life in the 21st Century? Should we be willing as a society to forego, in effect, some consumption so that we can have investment? Do we stand willing to stop dumping when it occurs in this economy, even if it may benefit the consumers in the short term, so that our industries can maintain a viable base and we can create the jobs?

It seems to me that these are the real questions that we face, and I think that what happens is too often we get distracted into the whole discussion of free trade versus fair trade and market economics versus industrial policy. My basic would be that any economy, any society that has a 2,000-page tax code does not have a true market economy.

Senator EXON. Just one more comment, and then I will be glad to yield, Mr. Chairman.

Pat, I am sure that you are familiar with the Exon-Florio law that for the first time gave the President of the United States the tools to stop foreign takeover, principally the Japanese and some others, that would adversely affect the national security interest of the United States.

To make your point, when we were proposing this law we had all kinds of opposition to it, some of it, I know, created by the Japanese. Also, public policy is influenced.

When this law was being talked about in hearings before this committee before it passed, a top official of the Treasury Department came over and asked me, well, do you understand, Senator Exon, if this law becomes effective that it would have a "chilling effect" on our trade with many foreign countries, including the Japanese? I said exactly. It is designed to have a chilling effect on the buying of America at least in the area where national security is involved.

So I tend to agree with you, Pat, that there is this feeling that permeates in far too many quarters, that we simply do not have a problem, and some how free trade is going to solve it all, which I suggest is not the case. I take it that that is what you were trying to alert America to, the buying of America through a whole series of means and steps.

Is that what the intent of your book really is all about?

Mr. CHOATE. The real intent is to say with those purchases comes political influence, and political influence is tied with diplomacy. In the combination of political influence and diplomacy gives many of America's foreign competitors a distinct political advantage in the economic marketplace.

Senator EXON. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Ford.

Senator FORD. Mr. Chairman, you raised the problem or the statement in the book as it relates to Ambassador Strauss. I was sitting here hoping it may not come up, but it did. It has bothered me considerably because I know Robert Strauss, as I am sure you do, and you know Alan Wolf. When I read this statement, there is something about it with which I will have to agree with my good friend, Jim Exon. Bob Strauss has never been one to be secretive. If anything, people think that he talks a great deal to the press.

I was pleased to hear you say that Bob Strauss is honorable, he is able, and he is innovative. The statement that was in this week's issue of U.S. News and World Report disturbed me a little bit, so I took the liberty of contacting Robert Strauss and also Alan Wolf.

I think there are two important points that need to be made here. The letter is not secret; it never was. It has been in the Congressional Record here since early 1978. That does not appear to be secretive. The letter merely reiterated the understanding of U.S. Government policy and was cleared by agencies such as Treasury and the Justice Department in particular. That does not indicate that anybody was trying to do anything they should not do. It was cleared with the proper agencies.

Mr. Chairman, I have this letter from Alan William Wolf, and I want to read it into the record. I am sure you will have some rebuttal, but at least from reading the short couple of paragraphs in U.S. News and World Report you would think it would be something somewhat different than what it really is.

The letter from Alan Wolf reads this way:

> I was surprised to read in the current issue of U.S. News and World Report a story about testimony that may be given before your committee on a supposed 'secret protocol' to an agreement with Japan in 1977 regarding colored televisions.
>
> While I do not currently have the text of the letter in question, I am fully familiar with it. As you know, I was U.S. Deputy Trade Representative during that period. I remember the events of the time clearly and must tell you that the story is without any basis in fact. Here are the facts.
>
> The U.S. color television industry had been devastated by dumped Japanese imports and Japanese practices. There had been no real relief under U.S. antidumping laws at the time administered by the Treasury Department. An import relief case was filed which was within the jurisdiction of the Office of the Special Trade Representative for a recommendation to the President for action.
>
> Bob Strauss, the Trade Representative, recommended without reservation in the form of an orderly marketing agreement with Japan which President Carter approved. Bob Strauss was personally involved in the negotiations, which was one of the key trade issues between the Government of Japan and the United States in 1977. It was the first and only relief of any kind which this industry received from any administration regarding this trade problem.
>
> The talks were tough. Japan wanted to ship over 2.5 million sets per year, and there had been indications in February of 1977 before Strauss was appointed that this amount would be acceptable to the new administration. Strauss had the difficult job of pulling back from that amount and succeeded finally in the corridors at the London Economic Summit several months later in 1977.
>
> There were no secret commitments made to the Japanese. There was no interference by the Office of Trade Representative in any Federal investigation, either antitrust or antidumping. STR had no authority to intervene at Treasury, Justice, or the FTC and did not do so.
>
> As Deputy Trade Representative, the negotiating team reported to me, and I was present at Bob Strauss' meeting with the Japanese officials which at the end ran around the clock. When the deal was done and Japanese imports were to be limited, we received a request from the Japanese that the

Government of Japan would be consulted as the pending antidumping case proceeded. They told me that it was and there would be.

I called Treasury and asked if this was normal procedure. They told me that it was and that there would be nothing out of the ordinary in giving a statement to the Japanese Government along these lines. It was drafted, and Treasury approved it. I made it clear to Treasury that we were not seeking to influence the result of the investigation in any way. It was not part of the deal. It would have been inappropriate. It was not suggested to us by the Japanese nor by us to Treasury.

The antidumping case at Treasury did not turn out well for the domestic industry, to put it mildly. This was one of the factors, if not the chief one, that caused Treasury to be relieved by Congress in 1979 of the responsibilities for administering the trade laws. However, that result was not attributable in any way to Bob Strauss or the office he oversaw.

It is ironic that Bob Strauss, who delivered the only public policy benefits for this import-ravaged industry, is being criticized 13 years later for somehow compromising the U.S. industry's interests. It is also particularly unfair, it will also be unfortunate, if the issues which are being addressed by the committee which require public review are obscured by controversy over the basic accuracy of material presented.

I have not seen your book yet, but, on the basis of this excerpt in the press, this particular episode and the terms in which it has been characterized in U.S. News and World Report never occurred.

If there is any additional help that I can be to the committee, please do not hesitate to call upon me.

Senator FORD. Mr. Chairman, I ask that a letter from Ambassador Strauss be included in the record.

The CHAIRMAN. Without objection, so ordered.

[The information referred to follows:]

The Honorable Wendell Ford,
United States Senate Washington, DC 20510

Dear Senator Ford: I am informed that the Committee on Commerce, Science, and Transportation will conduct a hearing Thursday morning, September 27, on the subject of "Foreign Influence in the U.S." According to reports, among the expected witnesses is Pat Choate who is apparently about to publish a book.

Although I have never met nor spoken with Mr. Choate, I understand that in his book he alleges that certain actions were taken by me in the spring of 1977 shortly after President Carter named me his Special Representative for Trade Negotiations. Specifically, Mr. Choate has written that 'I entered into a "secret protocol" or reached some kind of secret understanding with the Japanese Government committing the U.S. Government to do things which were not in the interest of the domestic television industry.

These allegations might make good copy but they are not true, as Mr. Choate, (who was not involved in the matter and whose knowledge of the subject seems at best to be third hand) would have discovered had he undertaken to check his facts. A review of the record demonstrates that my conduct during the time that I held that office was open and above board, in the best interest of the domestic television producers and of the United States. Moreover, there was nothing secret about what was done in the negotiations.

In 1976 (before President Carter entered office), there was a surge of imports of color television sets from Japan which was seriously injuring the U.S. industry. Fighting for their existence and feeling rebuffed by the Government, the domestic producers filed five different types of lawsuits against the Japanese producers alleging various unfair practices and asking the Government for various forms of relief. Only one of these lawsuits fell within the jurisdiction of the Office of the Special Representative for Trade Negotiations; the other lawsuits were exclusively under the control of the Treasury Department, the Justice Department, the Federal Trade Commission, or the Federal Courts.

Two days after I was named Special Trade Representative, President Carter received a report from the United States International Trade Commission reporting its determination (by a vote of three to three) under Section 201 of the Trade Act of 1974 that the domestic color television industry was being seriously injured by Japanese imports. A few weeks later, President Carter agreed with the three commissioners who had agreed that the domestic industry was being seriously injured by imports and instructed me to negotiate orderly marketing agreements with the Japanese Government to restrain exports of televisions from Japan. This I did, and two months later President Carter was able to announce an agreement with the Japanese Government restraining imports of color televisions for a period of three years—the first and most significant import relief ever obtained by that industry. A reading of the press with respect to my negotiations will disclose that the only criticism was that we have become too "protectionist".

In the course of negotiating the orderly marketing agreements, the Japanese negotiators sought assurances from the Special Trade Representative negotiators regarding the other legal proceedings which the domestic producers had initiated. A "side letter"—which is common in trade negotiations—was prepared in which it was said the U.S. Government would "consult" with the Japanese Government before imposing antidumping duties—something which, as I recall, occurs normally in the course of any antidumping proceeding—and would not sue them under the antitrust laws for enforcing the export restraints we were requesting that they put in place. Side letters of this type accompany every orderly marketing agreement the U.S. Government negotiates. I have not seen these side letters since 1977, but I can assure you they were approved by every Executive Branch agency which was involved. This was done for the simple reason that the Japanese negotiators could not return to Tokyo having agreed to roll back imports without so much as a vague assurance regarding the various lawsuits which had been filed.

You will find my recollection will correspond with those of others who are knowledgeable about the negotiation and its surrounding circumstances. Mr. Choate, regrettably, cannot be numbered among them.

Needless to say, I am proud of the service I was able to perform as Special Trade Representative. I have no apologies for anything I've done in Government or in private life. I have written this letter, for the record, as a first-hand account of the color television negotiations in order to clarify misconceptions that appear to have been advanced.

Sincerely,

ROBERT STRAUSS.

Senator FORD. I would like to have a copy of the hearing on Ways and Means of the House of Representatives of July 18, 1978, Serial 95-90, to be included in the record also.

The CHAIRMAN. It will be included by reference.

Senator FORD. I thank the Chairman.

The CHAIRMAN. Thank you. Senator Gorton—and excuse me, do you wish to comment, Mr. Choate?

Mr. CHOATE. Yes, I do. In my book——

Senator FORD. I thought maybe we had gotten by that.

Mr. CHOATE. In my book, on page 94 what I say is, "A year-and-a-half after Robert Strauss made his commitments Stan Rostenkowski learned of them. At a Ways and Means hearing, he asked Strauss for a copy of the side agreement, which he was given for the record. Surprisingly, virtually none of the American manufacturers ever learned of it. More importantly, the U.S. Government remained committed to the deal that was made."

The other point that I make—and I would also note that you can find further reference to that in a series of hearings done in the House Ways and Means Committee on September 21, 1978, on page 41. I put that in.

What I also did was trace out in the subsequent years what happened, and what happened, I think, in taking a look at the record, is that the sidebar agreement in effect did represent the position of the United States Government. It was an amalgam of views out of Treasury and Commerce and the Justice Department, and more importantly, what I am suggesting, out of that arrangement is the U.S. Government in the subsequent years, right up until 1987, in effect have faithfully fulfilled what we said would be done.

My point is that I believe—my judgment, in looking at, is that the arrangements were made with full good faith, but it is also my belief that the Carter administration was badly out-negotiated, and by not collecting the dumping duties that were owed, they in effect imperiled the consumer electronics industry, or the television industry, and by losing the end use market, what has happened is, they have set up a falling domino effect in which semiconductors and all the industries that depend upon semiconductors are now imperiled. It is, to me, an honest attempt that went bad.

Senator FORD. Well, Mr. Chairman, it seems that when you say it was an honest attempt that others did not carry out, now you are carrying it on up to 1987. This occurred 10 years ago, and you are being critical now, 13 years later, and it seems that anyone can take anything back 13 years ago that a decision was made by Government, and maybe it did not work out.

We all do not have crystal balls like you do, Mr. Choate, and so if we all could look at the future and be able to do those things—but it seems like that this is just, in my opinion, a cheap shot to help sell a book.

Mr. CHOATE. No, sir. It is simply a history of an event, and I think history of events, and as I think you will see, when you read the whole event, it goes from the mid- 1950's up until the present. I regret that this one isolated aspect of it is the focal point of attention.

Senator FORD. Well, that was the focal point in "U.S. News and World Report." That is where I got my first glimpse of it, and then I began to make some calls to try to find out something about it, to see how deeply you had—why did you take this particular case, instead of some other case, maybe?

Mr. CHOATE. Well, I did take other cases.

The CHAIRMAN. Well, let me ask Mr. Choate, you said that—and like I say, I have not read the book—that two more U.S.Trade Representatives have left to join firms that represent Japanese interests. Is Mr. Strauss one of those?

Mr. CHOATE. No. Mr. Strauss, after he left office, briefly represented the People's Republic of China, and registered. He has not served—he is not a registered lobbyist for any other foreign Government or any other foreign corporations since that time.

The CHAIRMAN. So his firm does not represent any Japanese——

Mr. CHOATE. His firm does, but he does not.

The CHAIRMAN. Oh, his firm does but he does not?

Mr. CHOATE. Yes, sir.

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. Mr. Chairman, just a brief comment.

I find it an incredible example of our ability to get side tracked on nonreal issues that the book, or at least an article, which is a collection of truisms coupled with a nonsolution, has received so much attention.

As I look through this article, I think a summary of it is found in one sentence at page 99, "The mission of Japanese propaganda is simple: to persuade Americans to adopt favorable views toward Japan." Wow. And this guy is making money telling the people of the United States that?

He goes on to say that sometimes the positions the Japanese companies take are not in the best interest, the general public interest, of the United States of America. Wow.

The distinguished Senator from Nevada and I have spent most of this week on the floor managing a bill designed to create a greater degree of energy independence for the United States. The Japanese companies lobbied against it. So did General Motors.

General Motors hires lobbyists who sometimes lobby for positions which are not in the overall interest of the United States of America, as if we did not already know that. I mean, they are hired to represent their own interest.

There is a list in the same vein that the Senator from Arizona has here. It is the kind of things they do. They operate student exchanges. I mean, I find it incredible.

Now, I do believe that in the course of this book, or this article, there is a listing of what the author calls Japan's six excuses, and each one of them is one which they certainly use. Each one of them is certainly one which, in my view, we should reject.

But to go through all of this analysis of exercises of the constitutional right to free speech of anyone who comes to the United States, and suggest as the solution that that we ought to tell Americans who at one point or another have been public-minded enough to work for the Government of the United States that they are limited in what they can make their living doing after they are done is, in my view, a crashing anticlimax.

There is certainly no discussion here as to what kind of people we will ever get to volunteer to take jobs at $80,000 or $100,000 a year subject to sequester next Monday, if we tell them that after they leave they cannot work for anybody or anyone with whom Mr. Choate does not agree. How much will that lower a $50 billion trade deficit with Japan? I submit, not at all.

There are hundreds of thousands of lawyers and trade representatives in this city who have never volunteered their services to the United States in a Government position who will be happy to take all of this money representing Japanese interest, and many of them are among the best lobbyists in the country. I think that the prescription which Mr. Choate gives us has no relevance at all to a tremendously serious problem. 7 or 8 years ago, even though I represent a very strong international trade State, I introduced a bill which would set a goal for our trade deficit with Japan which is much less than our present $50 billion, and by every $1 billion by which they miss it, we will have a tariff on their goods of 1 percent. It will go up when the trade deficit goes up, and it will go down when the trade deficit goes down.

I must say, I was never even granted a hearing on a proposal which I think would have had a real impact on the trade deficit, and now we spend our time somehow or another feeling that we can have an impact on that trade deficit by limiting people's right to lobby.

Mr. Chairman, I think this is a fruitless waste of time. We ought to be spending our time on doing something about a terribly serious challenge to America that will have an impact on it, and not fool around with these marginal ideas.

The CHAIRMAN. Senator McCain.

OPENING STATEMENT BY SENATOR McCAIN

Senator McCAIN. I understand Senator Bryan is next. I would ask his indulgence if I could take 2 minutes.

Senator BRYAN. Mr. Chairman, if it is not inappropriate, I would yield my place in line to the distinguished Senator from Arizona, if that doIt is a fares not put me all the way to the back of the line.

The CHAIRMAN. Go right ahead.

Senator McCAIN. As you know, I do not do this very often. I do have a meeting that is important to my State. Thank you, Mr. Chairman. I would make just a couple of comments.

Mr. Choate, first of all you made a serious mistake by maligning the reputation of one of the most outstanding men in America, Mr. Robert Strauss, particularly for something that took place 13 years ago. I have differed with Mr. Strauss on almost every occasion, but there has never been any question about his integrity, his service to this Nation and the outstanding contributions that he has made. You do him great disservice by this spurious allegation which, frankly, demeans the entire presentation that you make.

Second, obviously you are concerned, and the GAO will bring up and it is highlighted, that 76 former high level people are now employed by the Japanese. Late in the GAO statement, and appropriately late for those who have to read it, it points out that of these 76, 15 were Members of Congress and 17 were senior congressional staff. About half came from the legislative branch as opposed to the executive branch.

So if we are going to put some restraints on the executive branch, Mr. Chairman, let us consider doing the same thing to the legislative branch.

Finally, I would just reinforce the view of Senator Gorton. The Japanese are up to such insidious behavior such as staging local events with Japanese plants and factories. They are even publishing local newsletters and magazines. That is incredible and bizarre behavior. They are operating student exchanges, Mr. Chairman. I think that that ought to be stopped immediately. I cannot imagine something as terrible as operating a student exchange.

Mr. Choate, there are serious problems with our competitiveness with Japan, but to allege that it is somehow because they have now infiltrated our government to the degree that they are subverting our way of conducting our affairs is, frankly, a very, very unsubstantiated and almost dangerous allegation because, in my view, one of the biggest problems we face today is the rise of anti-Japanese sentiment which has some overtones to us which harken some days of the past, which I think is very, very dangerous to America and to Japan.

I thank my friend from Nevada for allowing me to have that time.

Thank you, Mr. Chairman.

Mr. CHOATE. May I respond, Mr. Chairman?

The CHAIRMAN. Yes. I was just going to say that you should have a chance to respond, sir.

Mr. CHOATE. I would be very pleased. I appreciate your statements, and I would be very pleased when both Senators McCain and Gorton have had an opportunity to read my book.

I would also say in that in my book and in my writing and in my testimony this morning, no spurious allegations have been made about Mr. Robert Strauss, but I would also say as with any public service, Mr. Strauss should not be above criticism. He is certainly not above criticism for the substance of what he does, and that is all that I speak about in my book.

As to the further question about sunshine, I would make the argument that sunshine is particularly appropriate and is particularly important in these kinds of decisionmaking processes that by and large determine the fate of our industries.

I do think that the Congress needs to have full information, I think the press needs to have full information, and I think the public needs to have full information. I think the kinds of provisions that have been called for by Senator Hollings and others in these sunshine provisions will do a great deal to end many of the abuses that I find and believe exist.

I would make another point which I think is important on the question of jobs. I think it is the conceit of this town that you can only fill high level positions or find high level positions from those who are making $200,000 per year or more as lobbyists. I dare say that there is not a single Member of this Congress who would refuse to stand for office if they thought that they could not be a Japanese lobbyist when they left that position.

My point is this. This country has thousands of dedicated, competent people who will seek public service as a privilege and are very pleased and would be very pleased to engage in that service without the promise of being a well-paid lobbyist for a domestic or foreign interest.

The point that I make in the beginning, the middle and the end of my book is that all companies in all countries should have as much representation as they want, and any restrictions that we should place should apply equally to domestic and foreign interests. The corruption of our democratic principles by foreign or domestic interests is no less or more desirable one over the other.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. Thank you very much, Mr. Chairman.

Pat, is there any information that you were able to gather during the course of researching your book as to the amount of money that American business interests spend in Japan lobbying the Diet or lobbying the executive branch of government over there in terms of positions or policies that would be helpful or advantageous to the American point of view?

Mr. CHOATE. Senator, it is very minuscule. The types of lobbying activities that are done here are by and large not done there. American corporations participate in the American Chamber of Commerce in Japan, but by and large this is like most chamber of commerce organizations where executives will come together and form task forces. They do not do the systematic information gathering and analysis and intelligence. The chamber itself has only recently employed an executive director.

Most American companies when they go there also find themselves at a disadvantage in that that is essentially a closed political system. A high level former government official simply will not undertake such lobbying activities on behalf of foreign governments and foreign corporations.

Some American and European corporations have been able to hire former government executives as managers, technicians or as advisers, but in the kind of political system we see here we simply do not see it. So there is a real lack of reciprocity.

Senator BRYAN. How do your numbers of $100 million per year being spent by Japanese interests lobbying the Congress and another $300 million, I think, that you pointed out compare with the amount of money that the Japanese business interests spend in Japan lobbying their own government or participating in the political process there for policies which they view are in their own self-interest?

Mr. CHOATE. It is just infinitesimal. In politics alone, business interests there, as I indicated, we can trace out in 1989 and 1990, and we can identify $4 billion that was spent.

Senator BRYAN. By Japanese business interests?

Mr. CHOATE. By Japanese business interests as political contributions and related activities.

In addition to that, we have no measure of the staffing costs, which we can, I think, assume would be enormous.

The Japanese and European corporations understand that public decisions are important, and they respectfully deal with those activities by trying to understand and shape those decisions. So it is a minuscule cost here.

So when you come to the United States, the cost of politics and lobbying in this country is a positive bargain. It is cheap compared to in other countries, because in other countries the businesses put a priority on it.

Senator BRYAN. So the Japanese spend about 10 percent, then, of what they spend in their own country in terms of lobbying and working the political system?

Mr. CHOATE. At least.

Senator BRYAN. One of the more interesting episodes that you cite would be the tariff classification for the light trucks, that initially because they have a lower tariff on them there was an attempt made successfully to persuade the administration that they should be classified as automobiles for purpose of tariffs.

Once that was approved, which lowered the cost to the Japanese, then a request was thereafter made and the administration was importuned that the same vehicle that was classified as an automobile for purpose of tariff consideration to reverse that classification in terms of qualifying for the CAFE or the fuel economy standards, which as been the discussion on the floor of this Senate, as you know, for many days this week, because light trucks have less fuel efficient requirements. Seemingly inconsistent to me, that was approved.

For tariff purposes they are considered automobiles. For purposes of fuel economy standards they are considered to be light trucks. Can you explain the byzantine reasoning process that reached that conclusion, from what you have been able to tell us?

Mr. CHOATE. I think part of it can be traced to lobbying. I think part of it, in doing the interviews, can be traced to financial clout of Japanese, German and British interests. As I point out, they were also involved with the Land Rover.

I do not think it is an uncommon story. It is simply playing the divisions within our government. You get one thing from one agency; you get something else from another agency. By and large, I think it reflects the absence of a national trade strategy.

Senator BRYAN. It just strikes me as irreconcilable that for purposes of a tariff they are classified in one category and for purposes of satisfying the requirement in this instance of fuel economy they are classified just the reverse.

Mr. CHOATE. I found it intriguing and counter-intuitive.

Senator BRYAN. Pat, is there any indication from any of your research that the tremendous leverage that the Japanese hold on us by reason of the fact that they buy a substantial part of our debt each year and obviously have the ability to impact in a very substantial way the financial markets in this country if they chose not to participate in buying Treasury offerings—indeed, they have been in the past few weeks some indications that the Japanese are retreating from the market. Is there any indication that that is part of a national strategy on their part to put pressure upon us to achieve some other objective that they desire that is separate and apart from refunding our debt?

Mr. CHOATE. Well, certainly we find ourselves—always, we find ourselves in the vulnerable position of a debtor. When one will do debates with Japanese officials, as I and others have, sometimes when you get down to the nitty-gritty of it you will just be flatly told well, we will not buy your securities.

The question came up in February of 1987 at a press conference, when the president was asked, what would he say to the those Americans that are concerned about our borrowing and our selling so many of our assets, and his comment was, do not complain too loudly, because we need the money to finance our budget deficit.

We are in a vulnerable position. We owe $800 billion. We are financing 30 plus percent of our debts from Japanese and European lenders. It is natural for them to expect and use that political leverage. We must be cautious, as debtors. This is the consequence of getting ourselves into this kind of overconsumption and underpaying for it in the circumstance.

Senator BRYAN. Do the Japanese in their system impose any restraints or deny access to information in terms of American business, industry, in ascertaining the elements that go into the formulation of Japanese policy, the type of information that would be collected by agencies of the Japanese Government? Do they impose greater restraints on access to that information than we do in this country to the same type of information that is developed by our governmental agencies?

Mr. CHOATE. My studies indicate that in the policy- making process it is, as one would expect, a very collaborative process. It is a process—unless people have special access, it is very difficult to know how those decisions are made in the bureaucracy itself and translated into the Diet.

It is a far more closed system than our own. It certainly makes it much more difficult to influence policy-making. The same is true in standards, and a whole series of other activities, and we do not have reciprocity.

We are doing better. We are getting better than what we are, but this committee, I know, has done studies in the past on intellectual property rights and standards and other activities. We are essentially dealing with two different types of cultures and two different types of political systems, one open, one closed.

Senator BRYAN. Thank you very much, Mr. Chairman.

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Thank you very much, Mr. Chairman. I have listened with much interest, because I think we all have to find a way to better understand Japan. I have taken a trade delegation there from my State on one occasion, and hope to do the same again in the next year or two, to try to understand our relationships better.

I think that this hearing this morning is a step in that direction. We do have a dilemma, in that many of our State Governors and United States Senators and Congressmen are actively engaged in economic development in our States, and I have closely followed our Governors, both Democratic and Republican Governors, trying to get foreign investment, and we do have some Japanese investment in South Dakota. We have a Toshiba plant at Mitchell.

During the vote in the Senate on Toshiba sanctions a few years ago I did receive some letters from Toshiba employees urging me not to vote for harsh sanctions. I do not know if those letters were inspired by the leadership of that company, or if the people just read it in the paper, but it is generally assumed in Mitchell that if Toshiba was not there the jobs would not be there, and that is a dilemma that we have in terms of attracting foreign investment and developing jobs for our people.

Have you seen any evidence that companies such as Toshiba urge letter-writing campaigns to Members of Congress on public issues? And I am not saying that these were urged by Toshiba. They might have just been people who read about it in the paper who had a job at Toshiba and wrote to me. But we did get a fair number.

Mr. CHOATE. What one can find in documents published by the Electronics Industry Association of Japan and in documents published by the Kadunran, the Japanese big business organization, in those documents what they say as part of their objective is to establish a grassroots activity inside the United States to influence the Congress by local means, and what one sees is, their letter-writing campaigns are encouraged. Local relationships establishing, trying to get Governors to come and lobby the Congress on specific activities, they are encouraged.

Mr. Morita is very clear in his book, "A Japan That Can Say No." He says, "One of our activities is to get the American people on our side and have them, in effect, not elect those people who bash Japan." Which means those people who criticize Japan.

It is a fairly standard political practice inside the United States. We have used it inside this country for many years. What is happening is now our foreign competitors are coming and using it, and American companies—your American companies from your State, when they go to Japan, they just simply cannot mount such a campaign to be able to influence the Government and the decisions of their competitor's Government.

Senator PRESSLER. The business of grassroots lobbying—I must confess, I have not read your book, but there is a section in there on grassroots lobbying. Is this a practice? I mean, how is a letter-writing campaign encouraged, specifically?

Mr. CHOATE. Inside the internal dynamics, I cannot say what happens. As a member, you would know better than I. On various issues what will happen is suddenly you will see letters begin to appear on your desk from either the companies, as happened in the Toshiba case, and in the hearings on the Toshiba matter.

As you know, there were several thousands of letters that seemed to come from across the country, from wherever there were facilities. On the case of the truck import tariff, for example, in talking with people in the Congress, one of the things that they indicated, all of a sudden the importers, they were just flooded with letters. Chrysler, General Motors and Ford mounted a counter-campaign. Their dealers put letters—but again, I think that is pretty standard politics.

The point is not that is wrong, because it is certainly not. The point is, is that the Japanese competitors are systematically integrating a political strategy with their economic strategy, and the American companies simply do not do it. I mean, they have not quite got the game. I mean, they will hire lots of lobbyists and lawyers. They will come, they will work on an issue like trying to beat the tariff regulation or change the tax code in some way, but the sort of systematic focal point is just not done.

Senator PRESSLER. On the issue of PAC funds—and if you have covered this before I came into the room, please tell me and I will read the record. We recently had an amendment limiting participation in PACs. Senator Bentsen offered an amendment to the Senate campaign reform bill that prohibited a U.S. company with more than 50 percent foreign ownership from sponsoring a PAC. Now, what impact will that have?

Mr. CHOATE. We have at this point more than 100 foreign company PAC's inside the United States. I would estimate that that would probably cut that number in half, with a 50 percent requirement.

Senator PRESSLER. In terms of—in the upper Midwest, where I am most familiar, there is a feeling it is an unresolved dilemma in that there is a feeling of those who promote economic development that we very much need investment from Japan and elsewhere to create jobs. There is also a feeling that in certain areas of competition the Japanese have been very tough in terms of their teamwork, as compared to our individual small businessmen, in the areas of banking and machine tools, and lots of other areas.

Do the Japanese work as a team in business? Do they—in certain parts of the country, have they underpriced our small businessmen where they are not being watched closely, and with a systematic plan of taking over a market in an area?

Mr. CHOATE. In the 1970's, the OECD, in an international study of all countries identified, the Japanese Government had formally approved 92 export cartels, and they cut the gamut from textiles on into the most advanced electronics. The objective in these kinds of cartels is to close your market at the early stage. It is to share information.

Sometimes you get a little Government help, not necessarily a lot, often to engage in predation by undercutting your competitor both with subsidies at home and through dumping of the product. I mean, not dissimilar from what John D. Rockefeller did when he consolidated the kerosene industry in the 1880's.

I mean, it is a standard monopolistic practice, then, once the market is dominated, to then come back in and to harvest the monopolist price by raising the price on consumers. The consumers get a benefit on the front end. Once the market is controlled, then you wind up with the consumers, in effect, being harvested for the excess and unwarranted profits, at the same time to keep prices low enough so that competitors cannot come in.

On the question of investment, which is, I think, a very important one, America has the most open—America is the most open country in the world to foreign investment, and by and large, what we are doing here is we welcome foreign investment.

American companies, the top 200 at least, are very internationally minded. American companies invest abroad very aggressively. In Europe and Canada, Britain, what we find is, our investments are welcome. In Germany, for example, 12 percent of the manufacturing base is foreign-owned. In the United States it is roughly 9 percent of the manufacturing base. In Japan, it is probably somewhere between 8/10ths and 9/10ths of 1 percent.

Now, why is this important? As we increasingly find our industries on the same competitive level, what we also find is that to compete we either must be able to invest in the foreign market, or we must be able to export to the foreign market, or some combination.

The fact that the Japanese market, for historical, cultural reasons of industrial structure, is closed to American investors gives them a decided advantage. It inhibits our manufacturers, when they have first-class products, to be able to penetrate the market.

On the flip side of that, one would think that that would then lead to a concomitant responsibility for the Japanese to take more imports, but that, too, does not happen. Again, a central objective of their political strategy is to keep that status QUO. is to have a circumstance where the market can remain relatively closed for investment, where ours remains open; where their market remains tightly closed to competitive goods while ours remains open.

In a game with two different sets of rules, what we can anticipate is that virtually all of our competitive industries over the next 10 or 15 years will either be bought up or will be defeated. It is fairly straightforward, when one just takes a look at it into the future.

Senator PRESSLER. One final question. What advice would you give to the governor of a State that is growing economically who is working to develop jobs when he has the opportunity to obtain Japanese investment? What advice would you give to him?

Mr. CHOATE. Well, I would give my advice on this basis. I was chief planner for the State of Oklahoma and was involved in establishing their economic development program, and I was also the commissioner of economic development for the State of Tennessee and established the Tennessee foreign investment program, among other things, in the 1970's. My advice would be simply this. We should encourage foreign investment in this country. At the same time we should demand reciprocity from other countries so that our investors have the right to invest there.

If I were advising a governor today, I would actually want to come to the Congress and say why not put caps on what States can give to companies in these bidding wars. What we have seen is a circumstance where the States have gotten into these massive bidding wars. They are giving away massive amounts of money. They are offsetting and losing many of the benefits that accrue. We can learn much from the Japanese and the Europeans on this.

The Japanese firms, for example, domestic or foreign, are taking a look at investing in their provinces. The Japanese Government puts limits on what those local communities can give a company. The same is true with the Europeans.

Now the truth of it is, when we take a look at the United States, European, Japanese, Korean, and Taiwanese investors are going to be coming to America. They are going to come here because it is a great market, and they are going to come here because they can get good workers and they can make money. The issue is where are they going to locate.

We need a national policy to stop the bidding wars. So I think it would be in the interest particularly of the small States to stop that who have lesser resources to engage in the bidding wars. So that would be my counsel.

Senator PRESSLER. Thank you.

I may have some more questions for the record, Mr. Chairman.

The CHAIRMAN. Very good.

Senator Robb.

OPENING STATEMENT BY SENATOR ROBB

Senator ROBB. Thank you, Mr. Chairman.

Mr. Choate, it is good to see you again.

We have met a number of times over the last decade and a half, I suppose, in various incarnations, and so I am familiar with some of the witness' background and have appreciated some previous analysis of economic trends and business prospects and what have you. You have shared some of the same experiences.

I am not burdened, as apparently most of my colleagues are not burdened, by having read your book at this point. I do look forward at some point to reading it. I have heard some reviews of it. I did read the Harvard Business Review article that talks about, I presume, most of the same things that you talked about in the book, so that I would make an assumption there.

On the basis of the conversation or the comment that has taken place this morning, I sense an implicit criticism of the Japanese for playing very well by our rules, taking advantage of an open society and going out and recruiting the ablest whatever the case may be. I think all of us needing access to information certainly like to deal with the ablest people possible.

I am a little concerned that the criticism is of the Japanese or anyone else for using our rules effectively, whereas the emphasis might better be placed on what we can do to effectively penetrate their decisionmaking process.

You indicated the numbers of dollars that we expend, and that has traditionally been a major complaint by a number of companies but particularly Japanese or cultures where there are language and other difficulties that make penetration a more time-consuming venture.

I must tell you, just before this meeting I was meeting with someone who happened to be European who just established a major plant in Virginia. I had a chance to meet with him earlier and he was coming back to tell why he had finally made the decision to come to our particular State. That is something of a vestige of my old days, as several of us here, at least just about everybody on this side, have all served as governor. It is hard to take off that industrial development hat.

First of all, would you just comment in terms of the priorities as to what we ought to do as a matter of policy, whether or not it is a fair criticism of your book or at least the theory that you are advancing that we ought to penalize those who are especially successful at playing by the rules that we establish or, indeed, the rules that they help establish by using our system rather than looking at the other side and trying to determine where we can help formulate their policy or rules or penetrate which, as you have acknowledged we do in most cases relatively little of?

Mr. CHOATE. My opening statement was very much in the tenor of your statement.

The point that I was making, the issue is really not about the Japanese, the Germans, the Koreans, or the Taiwanese. One can look at them to understand how our political systems works, where there are flaws, where there are some changes that need to be made.

What they are doing is entirely legal, and they are doing it very systematically. That is very admirable. They understand our system.

My basic point is that there are flaws in our system that we need to address. I believe that the revolving door between public service and lobbying should be closed. I think it is too open now. What I believe is with regard to certain level positions such as CIA Director and USTR, there should be a permanent ban on them becoming a lobbyist for anyone. I think that we can find more than enough good people to serve that. For lesser levels I think it should be a 5-year, 10-year or longer cooling off period.

The second basic recommendation that I am making is that we need more sunshine in the process in some of the exemptions or in the registration. We need, I think, also to have that information more centralized, as is called for in Senator Hollings' and Senator Bryan's bill.

Most of all, in this book and in my writings and in my articles and in this testimony this morning, I am also saying and what I said in my opening statement is American business people have finally got to come to the point where they more systematically and more thoughtfully consider their involvement and their interactions with government, because the actions of government are quite important.

My central complaint and my central lesson of this writing is that time after time American businesses are losing economically because they do not understand and are not actively involved politically or at least in the public policy arena in shaping the long-term environment in which they operate.

So the lessons are for us and not for them.

Senator ROBB. Let me ask you one other question, if I may. I asked this particular industrialist who has bought and established companies all over the world what we might do to be more competitive, which I know goes back to something that you have talked about, lectured and written on over a number of years in many different capacities.

I asked him about the difference, and he happens to come from the U.K. He talked about how they were losing their industrial base. He indicated that he thought that the reasons for their loss of base and the perspective loss of industrial base here was the fact that we simply have been insufficiently committed through education and culture to reward competence in technology, in process technology, in production technology and what have you, going back to the vocational education base that he felt had been abandoned.

He was very happy with United States company and was expanding his base in a rather rapid progression at this point. He said that the principal inhibiting factors for him in competition in certain respects had much more to do with, first, the cost of capital, particularly vis-a-vis the Japanese—and I do not think you would disagree that that is a major impediment.

The second one that many of us have focused on—I know you have in the past—is the lack of a long-term commitment, making decisions based solely on quarterly returns or the next statement or shareholders meeting or the next person that wants to put you in play or whatever the case may be in the business sense, and the same thing with politics and everything else, all being short term rather than long term.

Would you just assess those impediments to reversing the trade deficit, if you will, vis-a-vis anything that we can do with respect to policy here?

Mr. CHOATE. I think the cost of capital is a major item. That differential is rapidly narrowing, as you know, as the Japanese interest rates have risen in recent years, though what we also find is Japanese capital is still made available on a preferential basis to medium- small-sized firms, and many of the uses of that capital are better made use of because they do not have both this takeover movement that really devastated our industries in the 1970's, and they have a certain sharing at the precompetition stage in the developmental cost.

I think when we take a look at this country in the whole arena of the technical education that by and large we at least have set the foundations to do what needs to be done there. We have put into place 1,300 of the community colleges in the 1970's and the 1980's. Again, the issue there is increasingly to make sure that we have the equipment that is necessary and that those training programs focus on the needs of specific employers.

For the longer term, the best thing that we really need to do is develop a national policy in effect or a national ethos of investment in this country rather than consumption. Whereas the 1980's were a decade of consumption, the 1990's should be a decade of investment.

What that means ultimately and the first step that I think must be done in the public policy arena is we need to find ways to see the Federal budget deficit reduced. We need to find ways to consider all of the items that are involved in that budget. Much of the deficit, as you know, is hidden, the Highway Trust Fund and Social Security trust fund. If we can take those kinds of steps, then over the long term we can work our way back out of our dilemma.

I would say at least on the substance of economics, I think that we need to keep in mind in this country that we did not build a $5 trillion economy because America is a bunch of dunderheads. We are a competent and aggressive people. We are simply doing just 86 things out of 100 right when we probably need to be doing 93 or 94.

Senator ROBB. Mr. Chairman, I will not take that invitation to jump on the budget deficit debate for fear that you and I and anyone else here will take the rest of the morning explaining how we think it could be accomplished.

I thank you, and I thank Mr. Choate.

Mr. CHOATE. Thank you, Senator.

The CHAIRMAN. Very good. Thank you, Senator Robb.

We have a distinguished witness following you, Mr. Choate, to give balance to this hearing, but I see my colleagues have already given balance. Your book has been trivialized. The statement has been made that it has no relevance at all to a very serious problem.

Let me say as a governor who attracted industry, Luther Hodges of North Carolina and I in South Carolina 30 years ago made the first trips to Latin America and Europe. I have more West German industry in my State, of which I am proud, than all the 49 other States combined. I have about 29 Japanese entities now. We just broke ground and established a joint endeavor by Bosch-Nissan. Incidentally, West Germany owns 51 percent. This is automotive automated electronic engineering, the highest of technology, and we are proud of that.

So this is not a question about investment in America. This is an eye opener to our policies. The truth is there is no such thing as free trade when government ends up being the comparative advantage. You have described what they do in the Government of Japan. That is not a Congress like many people think. In fact, it is a crime to get those money here. We are indicting them right down there in my own backyard.

With respect to dumping, I know from hard experience that in 1980, in the field of textiles, we in the United States and the European Economic Community both had a deficit in the balance of textile trade of $4.5 billion.

Now, after 10 years, the European Economic Community, by enforcing their 34 bilateral textile agreements under the MFA, they will reduce that deficit to less than .5 billion—less than $500 million—and us, with our most protected industry, as they characterize it, by the failure of enforcement that deficit and the balance of textile trade has grown to $26.5 billion by last year.

It is up over 12 percent this year, and so we are looking at a $27 or $28 billion deficit, over 20 percent of the deficit in the balance of merchandise trade, and I think the colleagues—and that is why I want to put it in the record—ought to know about these trade negotiations.

They are more secretive than the CIA. I say that advisedly. I have been with our so-called observers. They allow observers, supposedly, to be there in Geneva as they negotiate, and the standard operating procedure of our negotiators is to sit on the outside all day long while, for example, the British—the United Kingdom business leaders are there observing, Senator, and they are into the negotiation.

So what we do is, we wait outside in Geneva until around 6.00 or 6.30, when they break, and then we buy the Scotch and take them to the bar and pump them, and try to find out what in the world is going on.

Now, when you talk about secretiveness that nobody would be secretive in the U.S. Trade Representative's Office, they just do not know our trade negotiator. Right this minute, Carla Hills has put on the table a globalization of our textile quotas. We put that into the law. It has been passed by overwhelming majorities in both Houses.

They are saying now it is unconstitutional and breaks all our agreements, and then, they say it particularly mitigates against Turkey and Egypt. Absolute nonsense. They can reassign the $1 billion they have given the People's Republic of China, where they are killing them down in Tiananmen Square, and assign that all to Turkey. That suits me fine. I think it would be a good policy.

So no one is really going against—and we allow the President to do that. But I think you have held your line, and I am proud of you, to tell you the truth. I think rather than have no relevance at all—they did not ask any questions. Their emotional statements were all made because you are starting to not bash Japan, but bash America. That is what I have been trying to do up here for 20 years or so, is to bash Washington.

I found out that the business leadership now is just giving up entirely. I used to get them in here on the deficit. You cannot get Pete Peterson and those double-page "Wall Street" ads. We used to do that 10 years ago. They have given up the ghost and gone afar on trade.

They say rather than pay the Washington lawyers, because the Department of Justice—you are criticized, but here is exactly what Blackmun said, not what Choate said, and I see, because the staff has given it to me, Justice Blackmun talking to the Solicitor General of the United States in the hearing before the United States Supreme Court, Justice Blackmun: "In any event, you are here in good faith, doing your best to uphold the position espoused by the Government of Japan anyway?"

I think it is documented, and it is embarrassing, of course, to learn these things, but I think your research and your book is extremely valuable to the awakening of America.

Jack Kennedy wrote the book, "While England Slept." I think you have now startled us with "While America Slept." For the past 20 years we have lost our industrial backbone. We have lost our economy. No trade policy, no energy policy, no fiscal policy, no nothing, but just vote for us politicians and read my lips.

Thank you very much, Mr. Choate.

Mr. CHOATE. Thank you, Mr. Chairman.

The CHAIRMAN. Secretary Richardson. Good morning, Mr. Secretary. We appreciate your appearance, and you have your statement and you can deliver it in full, or highlight it as you wish, or having seen the interest of the committee itself in various directions, address your remarks to that. However you wish.

I wanted to make sure an individual of the character and capability and respect—and I know of no one more respected than yourself, and we are grateful for you and the many roles you have served in our Government, and I did not want a book of this kind to come out without hearing from someone like

STATEMENT OF ELLIOT L. RICHARDSON, CHAIRMAN, ASSOCIATION FOR INTERNATIONAL INVESTMENT

Mr. RICHARDSON. Thank you very much, Mr. Chairman, and members of the committee. I appreciate this opportunity, and I thank you for those very generous words.

I do have a rather long prepared statement, Mr. Chairman, which I would appreciate having inserted into the record.

The CHAIRMAN. That will be included.

Mr. RICHARDSON. Thank you, sir.

My brief remarks now, Mr. Chairman, will be directed to the two principal questions which we understood from the staff of the committee were your principal interests at this time. I am not in a position to discuss Mr. Choate's book, as such, but he did mention these issues.

First, the adequacy of the Foreign Agents Registration Act, and secondly, ethical aspects of representation of foreign companies or their U.S. subsidiaries in the political process by former Government officials.

With respect to the former, Mr. Chairman—and I will be very brief at this point—I can only say that it seems to me that current law, the Foreign Agents Registration Act, already casts a broad net.

That means, then, that we have under that law only two significant questions: whether the information it requires is sufficient for the purposes of Government policy-makers, particularly Members of Congress, and second, whether the people or the groups that are required to furnish that information under the act are correctly defined and sufficiently inclusive.

My own view, Mr. Chairman, is that, while one could differ about the marginal questions, the marginal extent of its coverage, the current law is adequate. That, of course, brings me to the bill you introduced earlier this week, Mr. Chairman, because Title I of the bill would amend FARA in ways relevant to this discussion.

It would do so in four RESPECTS. first, it would expand FARA's definition of a foreign principal to include any person, including a corporation, "if the foreign principal owns 50 percent or more equitable ownership in such person."

Second, it would narrow the existing exemptions for attorneys and those engaged in private and nonpolitical activities. Third, it would add new penalties and establish a new branch of the Department of Justice to handle the increased registration requirements, and it would change some key terms.

The most important of these changes clearly is the one that would expand the term "foreign principal" to apply to U.S. subsidiaries of which more than 50 percent of the shares are foreign-owned.

Under current law, a person is deemed to be an agent of a foreign principal when he acts on behalf of a foreign Government, a person outside the United States other than a U.S. citizen, or any business entity or association with a principal place of business outside the U.S.

By extending the definition to include individuals who represent foreign-owned U.S. companies, the result would be, in effect, that people engaged in political activities would be required to register as foreign agents. Under FARA, political activity is very broadly defined, and the result, then, would mean, as we read the proposed amendments, that chief executive officers and other senior managers would be required to register as a result of activity in the ordinary course of their business.

The act would rename the people who would be covered, changing the term "agent of a foreign principal" to "representative" and the term "political propaganda" to "promotional material."

My problem, Mr. Chairman, with these extensions of FARA is that they ultimately rest upon the assumption that there is a public policy interest to be served by the disclosure of the political activities of individuals working for foreign-owned U.S. companies but not for individuals engaged in the very same kinds of activities who work for American-owned companies.

If the concern is that there should be disclosure of what these people do to influence the Government, then the question arises, why does not the Lobbying Act adequately cover that? That is certainly its specific aim.

If the disclosure required under the Lobbying Act is insufficient, then the question would arise whether that act should be amended. It is not clear to me, therefore, what Government interest would be served by subjecting large numbers of Americans to the burdensome requirements of FARA simply because the shares of the company they work for are foreign-owned.

We have tried to estimate the extent to which the coverage would be expanded, and it would in effect mean that where there are about 900 people registered now the number might be increased to, conservatively in fact, as much as 20,000.

The second question involves the revolving door, Mr. Chairman. I must say that I have a fundamental problem in this context with the term "foreign" and the question of foreignness. On its face the question implies that it is less appropriate for a former government official to undertake a given assignment on behalf of a foreign-owned U.S. company than on behalf of an American-owned U.S. company. It is not clear to me why the ethical propriety of what the former official does is affected by the nationality of the owners of the company that retains him.

Insofar as foreign ownership is otherwise relevant, it is sufficiently addressed by FARA.

The more significant relationship, the one that is of concern, is that between the formal official and the agencies in which he served. Clearly, a former government official should not have influence over matters with which he was directly involved in the course of his government service.

Title II of S. 3101 is aimed at prohibiting former government officials from representing foreign-owned U.S. companies and foreign governments. Quite clearly, the integrity of postemployment conduct of former government employees is an appropriate public concern. The public interest demands that government decision be rendered on the basis of legitimately relevant considerations, not extraneous or improper influences.

Quite clearly, however, there is a proper role for the effective representation of outside interests, including those of foreign-owned U.S. companies. This indeed has been taken for granted in past Congressional proposals whose principal effect would be to defer such representation for a number of years depending on the type and level of the ex-employee's former position.

As it concerns other than the representation of foreign-owned U.S. companies in foreign governments, S. 3101's modifications of existing law invite the question of whether the changes are really needed. The important issue and the debateable one raised by your bill concerns its 2-year and 5-year bans on representation by former senior officials.

Here, it would seem to me that the controlling fact is not that the client is a foreign-owned U.S. company or foreign government, for if that were so the ban would be of equal duration for all former government employees. It is, rather, the significance appropriately to be attached to the former employee's rank.

Now it is no doubt true that former cabinet members and the like have ordinarily had frequent occasion to deal with Senators and Congressmen and other high level people and that those contacts have often given rise to relationships of mutual trust and confidence, if not of friendship.

Standing alone, however, these circumstances may as easily serve the public interest as abuse it. It seems to me genuinely questionable whether the latter possibility justifies preventing for 5 years foreign-owned U.S. companies or foreign governments from seeking the benefit of the knowledge, experience and wisdom of a former senior official.

Indeed, the former employee's contribution will often be to moderate or limit the foreign-owned company's or foreign government's position and to facilitate an ultimate resolution in which genuinely competing interests are balanced in a manner serving the interest of the United States. Of course, it needs to be recalled and is probably obvious that the ultimate result is going to be a result for which the present officials of the executive branch and the Members of Congress bear ultimate responsibility.

What we are discussing, really, is a process envisioned in the first instance by Madison in The Federalist, particularly Federalist number 10, in which the net public interest would be a resultant of the consideration of all the competing views presented as ably as might be.

So I am concerned, Mr. Chairman, that this piling up of constraints, starting with the attitude generated by Watergate, is not serving the general interests of responsible representative self-government but simply reinforcing cynicism towards a process that must necessarily in the end rest on trust.

I touched briefly, also, Mr. Chairman, on the question of whether or not there would be involved here a deterrent to public service. I think at the margin there would be. That might be an acceptable price, depending again on what interest or public benefit is in fact accomplished by a longer delay in the availability of former public servants in the representation of foreign-owned U.S. subsidiaries or foreign governments.

I think there, Mr. Chairman, the protection we have to have in the end is on the integrity of the individuals involved and the vigilance with which any abuses that can be identified are dealt with, and I really am not convinced that the kinds of remedies that would be provided for in your bill or the kinds of things that Mr. Choate talked about would significantly deal with the problem.

Indeed, I made a little list of the measures that Mr. Choate said he supports, and they really are only incidental responses to the massive macroeconomic phenomena that have led to the inflow of foreign investment into this country and globalization of the economy.

Thank you, Mr. Chairman.

[The statement follows:]

WRITTEN STATEMENT
of
ELLIOT L. RICHARDSON,
CHAIRMAN
of the
ASSOCIATION FOR INTERNATIONAL INVESTMENT
on
FOREIGN INFLUENCE IN THE U.S. POLITICAL PROCESS
before the
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
September 27, 1990

I. INTRODUCTION

Good morning, Mr. Chairman. My name is Elliot Richardson. I am here this morning on behalf of the Association for International Investment ("AFII"), of which I am Chairman.

AFII was founded in early 1988 to represent a partnership of U.S. subsidiaries of foreign companies, American-based multinationals, state governments, and American Chambers of Commerce abroad. We support U.S. international investment policy, which favors the free flow of capital in response to market forces.

AFII does not represent individual members -- corporate, state, or chamber -- before the Congress or the Administration on matters that affect their particular business interests. Rather, we seek to address issues of public policy that concern everybody with an interest in international investment. I am pleased to have the opportunity to appear before this Committee today to address one of these issues of public policy, the role of foreign persons and corporations in the U.S. political process.

Your staff has indicated that there are two topics my testimony should address: the adequacy of the Foreign Agents' Registration Act and the ethical aspects of representation of foreign companies or their U.S. subsidiaries in the political process by former government officials.

I should note from the outset that there are really two distinct themes common to these issues: access to the electoral process and access by foreign-owned U.S. companies to the political process -- that is, participating in elections and participating in other governmental processes. When speaking about elections, it is sufficient to say that foreigners have no right to be involved, that "foreignness" itself is a disqualification.[1] I, for one, and AFII for another, firmly believe that foreign persons should not have a role to play in the electoral process. Current law makes this very clear and I have not heard anyone advocating such a change.

Access to the political process is a very different question. The entirety of the American political system is based on a competition of ideas -- of an open and transparent decisionmaking system, the very purpose of which is to serve the public interest. Properly stated, the question before us ought not to be whether the U.S. subsidiaries of foreign companies or their American employees should be excluded from the U.S. political process; the issue which should concern us is whether this participation is proper or improper. I intend to devote my testimony to addressing these questions.

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[1] This disqualification is neither new nor controversial. After all, "the practical importance of nationality lies in its being for many purposes the legally significant tie between the individual and the state." W. Bishop, International Law 487 (3rd ed. 1971).

II. LEGAL REGULATION OF "FOREIGN INFLUENCE"

The United States regulates "foreign influence" at two levels. First, several statutes are aimed at the conduct of all U.S. corporations, including foreign-owned U.S. companies. Second, there are a number of specific measures, mostly registration and disclosure requirements, directed at foreign-owned U.S. companies, including the Foreign Agents Registration Act ("FARA") and the provisions applicable to foreign nationals under the Federal Election Campaign Act ("FECA"). In connection with FARA, I shall touch upon your new bill, Mr. Chairman, the "Foreign Representation Act of 1990."

A. Regulations Applicable to All U.S. Companies, Whether American or Foreign-owned

Like all U.S. companies, foreign-owned corporations operating in the United States are subject to significant restrictions governing their political activities. These restrictions take two primary forms. The corporations must comply with laws concerning their lobbying activities -- their direct attempts to influence Congressional decisionmaking.[2] They are also subject to specific campaign spending limitations.[3]

1. Regulation of Corporate Lobbying

a. Federal Regulation of Lobbying Act

The primary legislation affecting Congressional lobbying is the Federal Regulation of Lobbying Act.[4] A person is subject to the provisions of the Lobbying Act if he solicits, receives, or collects contributions, having a principal purpose of influencing the passage or defeat of Congressional legislation, and intending to accomplish this purpose by communicating directly with Members of Congress.[5] A "person" includes a corporation.[6] Every lobbyist (*i.e.*, someone who meets the above test and is paid to influence the passage or defeat of legislation) must register with the Clerk of the House of Representatives and the Secretary of the Senate.[7] Registered lobbyists must also file quarterly reports detailing the money they receive and expend on their lobbying activities, the purposes of their lobbying expenditures, as well as the names of publications in which they have published articles or editorials.[8] In addition, the Lobbying Act imposes strict record-keeping requirements. All persons (including corporations) subject to the Lobbying Act are required to maintain detailed accounts of their contributions, and must retain receipts for expenditures.[9] On a quarterly basis, they must file statements of their accounts with the Clerk of the House of Representatives.[10]

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[2] For a detailed analysis, see F. Krebs, Corporate Lobbying: Federal and State Regulation, 25 C.P.S. (BNA 1981 and 1988 Supp.).

[3] For a detailed analysis, see G. Merryman, Regulation of Corporate Political Activity, 16-3rd C.P.S. (BNA 1988 and 1989 Supp.).

[4] 2 U.S.C. §§ 261-270 (1988)[hereinafter **Lobbying Act**].

[5] 2 U.S.C. § 266; United States v. Harriss, 347 U.S. 612, 623 (1954). The scope and application of the Lobbying Act may not be entirely clear because of the difficulty in determining who is a covered person within the Court's definition in Harriss.

[6] 2 U.S.C. § 261(c).

b. Other Federal lobbying regulations

In addition to the Lobbying Act, there are a few other regulations affecting more limited groups of corporations. The Public Utility Act of 1935[11] imposes registration and disclosure requirements on covered companies. Also, the Federal Energy Regulatory Commission has adopted an administrative rule which requires the disclosure of certain lobbying expenses.[12]

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[7] 2 U.S.C. § 267(a).

[8] *Id.*

[9] 2 U.S.C. § 262.

[10] 2 U.S.C. § 264.

[11] 15 U.S.C. § 791(i)(1988).

c. Tax provisions affecting corporate lobbying

Lobbying activities are also affected by the Internal Revenue Code and Internal Revenue Service regulations governing the deductibility of corporate expenditures.[13] These rules allow for the deduction of direct lobbying expenditures, but only if the proposed legislation is reasonably related to the trade or business of the taxpayer.[14] Moreover, no deduction is allowed for participation in political campaigns, or for attempts to influence the general public on political matters.[15]

d. State and local lobbying regulations

Corporate lobbying activity is also regulated by state and local lobbying laws. All 50 states have enacted lobbying disclosure laws, regulating individual and corporate involvement in state legislative activities, though these statutes vary widely in scope.[16] Foreign-owned U.S. companies are subject to all of these regulations.

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[12] 18 C.F.R. Part 101, Account 426.4.

[13] I.R.C. § 162(e); Treas. Reg. § 1.162-20(b)(2)(as amended in 1969); for a brief discussion, see also Mertens Law of Federal Income Tax §§ 25.167-25.168.

[14] *Id.*

[15] *Id.*

[16] For a list of citations of state lobbying laws, see F. Krebs, *supra* note 2, at B-1101-02.

2. Regulation of Corporate Campaign Financing

a. Federal Election Campaign Act

Further restrictions on corporate political activity are imposed by the Federal Election Campaign Act of 1971, *as amended*,[17] and the political financing regulations enacted by the FEC.[18] Section 441b of FECA makes it unlawful for any corporation to make a contribution or expenditure in connection with any Federal election or primary.[19] There are, however, two major exceptions to the general rule. A corporation may still make expenditures for political communications aimed at its stockholders, administrative and executive personnel, and their families.[20] A corporation also may establish and administer a separate segregated fund, commonly known as a PAC, through which its stockholders and administrative and executive personnel may make political contributions.[21] The PAC may also obtain contributions from the corporation's employees who are not classified as administrative or executive personnel, but may solicit them only twice per calendar year.[22] Contributions may not be solicited from outside sources.[23]

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[17] 2 U.S.C. § 431-455 (1988)[hereinafter **FECA**].

[18] 11 C.F.R. § 100.1-115.6.

[19] 2 U.S.C. § 441b(a).

[20] 2 U.S.C. § 441b(b).

[21] *Id.*

These separate segregated funds are subject to the political committee registration requirements and corporate PACs, like all other political committees, must file periodic reports of contributions and expenditures.[24] Also, contributions to separate segregated funds may not exceed the contribution limitations of Section 441a.[25] A fund is subject to the contribution limitations for individuals unless it qualifies as a multi-candidate political committee.[26]

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[22] *Id.*

[23] *Id.*; importantly, all contributions must be given voluntarily. No contributions may be "secured by physical force, job discrimination or financial reprisals."

[24] 2 U.S.C. § 434.

[25] Under § 441a, an individual may contribute:
(A) An aggregate of $1,000 to any political candidate and the candidate's authorized political committees with respect to any election for federal office;
(B) An aggregate of $20,000 per calendar year to the political committees established and maintained by a national political party;
(C) An aggregate of $5,000 per calendar year to any other political committee; and
(D) No more than $25,000 in aggregate in one calendar year.
A multi-candidate political committee, (defined in § 441a(4) as a "political committee which has been registered under section 433 of this title for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office) may contribute:
(A) An aggregate of $5,000 to any political candidate and the candidate's authorized political committees with respect to any election for federal office;
(B) An aggregate of $15,000 per calendar year to the political committees established and maintained by

b. Federal Election Commission regulations

The FEC has promulgated regulations to implement FECA, and together with the statute itself they provide for the comprehensive regulation of campaign financing.[27] PAC reports are filed with the FEC, where they are analyzed for compliance with the statutes and regulations.[28]

c. State regulation of corporate political contributions

In addition to this federal regulation, there are also state laws which regulate corporate political contributions and expenditures.[29] Some of these statutes authorize the establishment of separate segregated funds by corporations. It should be clear, therefore, that corporations are limited in their ability to make financial contributions to U.S. political campaigns. The limitations on corporate campaign spending, when

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a national political party; and
(C) An aggregate of $5,000 to any other political committee.

[26] There is no ceiling on total annual contributions by multi-candidate committees.

[27] 11 C.F.R. § 100.1-115.6.

[28] 2 U.S.C. § 434, 11 C.F.R. §§ 104.1-104.17.

[29] For a list of citations of state statutes regulating corporate political contributions, see G. Merryman, *supra* note 3, at C-2-3.

added to the extensive regulation of corporate lobbying, mean that all corporations are highly restricted in their efforts to become involved in the U.S. electoral process. Foreign-owned U.S. corporations must, of course, comply with all of these Federal, as well as state and local, restrictions.

B. In Addition, Foreign-Owned U.S. Companies Are Subject to Additional Regulations

The political influence of foreign-owned U.S. companies is regulated even further by laws that do not apply to U.S.-owned companies. The Foreign Agents Registration Act of 1938[30] requires the registration and continual scrutiny of all U.S. agents acting on behalf of foreign principals.[31] Moreover, section 441e of FECA specifically bans foreign nationals from directly or indirectly contributing to any political conventions, caucuses, or any primary, general, special, or runoff elections on the local, state, and Federal levels.[32]

1. Foreign Agents Registration Act

FARA authorizes the Attorney General to monitor the activities of U.S. agents acting on behalf of foreign principals.

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[30] The Foreign Agents Registration Act of 1938, Pub. L. No.75-583, 52 Stat. 631 (codified as amended at 22 U.S.C. § 611)(1988) [hereinafter **FARA**].

[31] 22 U.S.C. § 612(a).

[32] 2 U.S.C. § 441e.

a. The application of FARA

FARA applies to any person acting as an agent on behalf of a foreign principal. Although certain activities are exempted, they do not include political activities of agents acting for foreign principals.[33]

FARA defines the term "foreign principal" as a foreign government or political party, a person outside the United States, or an entity that is organized under the laws of a foreign country or has its principal place of business abroad.[34]

FARA broadly defines the terms foreign government and foreign political party. For example, the term foreign government includes *de facto* and *de jure* governments, plus any insurgents claiming authority.[35]

An agent of a foreign principal is defined by FARA as a person who on behalf of a foreign principal or a person who is supervised, controlled, financed, or subsidized by a foreign principal (1) engages in political activities in the United States; (2) acts as a public relations counsel or political consultant in the United States; (3) solicits or distributes contributions, money, or other things of value within the United

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[33] 22 U.S.C. § 613.

[34] 22 U.S.C. § 611(a).

[35] 22 U.S.C. § 611(e).

States; or (4) represents the interest of the foreign principal before any agency or official of the United States government.[36]

FARA does not, however, apply to all activities by U.S. agents on behalf of foreign principals. As far as U.S. agents who represent foreign principals are concerned, there are two main exemptions. FARA exempts attorneys who represent foreign interests in purely commercial matters.[37] In addition, non-political activities are also exempted from coverage, including activities which are in furtherance of a bona fide trade or commerce.[38]

b. The requirements of FARA

An agent acting on behalf of a foreign principal must meet three main requirements. The agent must file a registration statement with the Registration Unit of the Criminal Division Department of Justice.[39] The agent must also label all political propaganda, as defined by FARA, and file it with the Registration Unit.[40] Finally, the agent is required to keep certain books and records of all his activities on behalf of a foreign principal available for inspection.[41]

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[36] 22 U.S.C. § 611(c).

[37] 22 U.S.C. § 613(g).

[38] 22 U.S.C. § 613(d).

[39] 22 U.S.C. § 612(a); *see also* 28 C.F.R. § 5.3 (1990).

[40] 22 U.S.C. § 614.

An agent acting on behalf of a foreign principal must file a registration statement within ten days after the agent-principal relationship arises. Moreover, the agent of a foreign principal must file a supplemental statement updating his original registration every six months[42] and file another statement within 30 days of terminating the agency relationship.[43]

The registration statement itself requires the disclosure of all aspects of the agent-principal relationship._ The agent's nationality and business records must be supplied[44] along with a statement detailing the agent's business and listing all employees involved with the principal.[45] Moreover, the names and addresses of all foreign principals must be submitted along with copies of each written agreement or a full statement of oral agreements between the agent and the foreign principal.[46]

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[41] 22 U.S.C. § 615.

[42] 22 U.S.C. § 612(b).

[43] 28 C.F.R. § 5.205.

[44] 22 U.S.C. § 611(a)(1).

[45] 22 U.S.C. § 612(a)(3).

[46] 22 U.S.C. § 612(a)(3)&(4).

Finally, the agent's registration statement must disclose (1) the nature and amount of contributions, including money or other things of value the agent has received from each foreign principal within the preceding 60 days;[47] (2) the names, business, and address of all other persons for whom the registrant is acting and whether they are supervised, directed, owned, controlled, or subsidized, in whole or in part, by a foreign principal;[48] and (3) a statement of expenses incurred on behalf of the foreign principal.[49]

FARA regulates the political speech of foreign principals by requiring their agents to disclose all political propaganda undertaken on their behalf. There are two basic parts to this regulation -- the definition of political propaganda and the filing requirements.

FARA broadly defines political propaganda and covers an agent's representation of a foreign principal before local, state, or Federal governments.[50] It also covers any

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[47] 22 U.S.C. § 612(a)(5).

[48] 22 U.S.C. § 612(a)(7).

[49] 22 U.S.C. § 612(a)(8).

[50] 22 U.S.C. § 611(j).

communication that is intended to influence in any way any segment of the U.S. public.[51]

An agent who transmits "propaganda" has 48 hours to file two copies and a statement describing to whom and where it was disseminated.[52] Moreover, the propaganda must be prefaced or accompanied with a statement describing the relationship between the agent and the foreign principal, and the agent must inform the recipient that he is registered as a foreign agent.[53] Anytime an agent for a foreign principal appears before a Congressional committee, he must furnish the committee with the most recent copy of his registration statement as a foreign agent.[54]

c. Enforcement of FARA

A willful violation of FARA or a willful failure to disclose material facts is punishable by a fine of up to $10,000 and five years imprisonment.[55] Moreover, while an offense continues the

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[51] *Id.*

[52] 22 U.S.C. § 614(a).

[53] 22 U.S.C. § 614(b).

[54] 22 U.S.C. § 614(f).

[55] 22 U.S.C. § 618(a)(1)&(2).

Attorney General may enjoin the agent from performing any duties on behalf of the foreign principal.[56]

FARA, as can be seen, is a comprehensive statutory scheme designed to monitor and regulate lobbying activities on behalf of foreign persons. As such, it serves the objectives of controlling U.S. political activities on behalf of foreign entities.

d. "The Foreign Representation Act of 1990"

S. 3101 would amend FARA in four ways. It would: (1) expand FARA's definition of a "foreign principal" to include any "person" (including a corporation) "if the foreign principal holds 50 percent or more equitable ownership in such person"; (2) narrow existing exemptions for attorneys and those engaged in private and nonpolitical activity; (3) add new penalties and establish an office within the Department of Justice to handle the increased registration requirements; and (4) change key terms, reflecting the broadened application of the statute to the international business community.

The most important change that S. 3101 would make is to expand the definition of a "foreign principal" to include U.S. companies more than 50 percent of whose shares are foreign-owned. Under current law, a person is deemed to be an agent of a foreign principal when he acts on behalf of a foreign government, a person outside the United States other than a U.S. citizen, or any business entity or association with a principal place of business outside the U.S. S. 3101 would include those individuals who represent foreign-owned U.S. companies. As a result, persons engaged in "political" activities on behalf of foreign-owned U.S. companies would be required to register as foreign agents. "Political" activity is broadly defined under FARA. Together with the proposed change, political activity would include not only Washington representatives and public affairs officers of foreign-owned U.S corporations, but also chief executive officers and other senior managers in connection with certain aspects of the ordinary course of their activities. It almost goes without saying that the number of individuals covered by FARA would be greatly increased. AFII has estimated that the number of registrants would rise from the current 900 to at least 18,250 -- a 1900 percent increase.

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[56] 22 U.S.C. § 618(f).

S. 3101 would amend FARA's current exemptions for attorneys and for those engaged in non-political activities. The exemption for attorneys would apply to representation of foreign principals before a court of law, eliminating the exemption for representation before government agencies. (In both categories, current law requires the attorney to inform the court or agency that the attorney represents a foreign principal.) The bill would also require any person relying on FARA's exemption for private and non-political activities to notify the Attorney General that they are relying on that exemption.

S. 3101 also would amend FARA by adding a new penalty provision and establish an office within the Justice Department to process the greatly increased number of FARA registrants. The penalty applies to a failure to file a registration statement, the omission of a material fact in the registration statement, and submission of false statements in a registration statement. Each violation would be punishable by a fine of $2,000 to $5,000.

The new office in the Department of Justice would administer the increased registration and any prosecutions resulting from failure to comply with FARA's requirements. Moreover, the Attorney General would be required to report annually to Congress on FARA's enforcement. Current law provides that the Attorney General may make such reports at his discretion.

Finally, the bill would redefine certain key terms, no doubt to reflect the application of this national security-based registration requirement to the international business community. For example, S. 3101 would redefine "agent of a foreign principal" as a "representative of a foreign principal." It would also change references to "political propaganda" and replace them with the term "promotional material."

My difficulty with Title I of S. 3101 is that it rests upon the assumption that there is a public policy interest to be served by disclosure of the (broadly-defined) political activities of individuals working for foreign-owned U.S. companies, but not of those working for American-owned companies. If the concern is to ensure adequate disclosure from those persons seeking to influence the government, I would note that the Lobbying Act is aimed at precisely that. If the disclosure required under the Lobbying Act is insufficient, then it should be amended. It is not clear to me, however, what governmental interest would be served by subjecting large numbers of Americans to the sweeping and burdensome requirements of FARA, merely because the shares of the company they work for are foreign-owned.

2. Federal Election Campaign Act

FECA makes it unlawful for a foreign national to contribute directly or to make a contribution through any other person in connection with a convention, a caucus, a primary, general, or run-off election or any other local, state, or Federal office.[57] A "foreign national" is defined by reference to the FARA definition of a "foreign principal." [58] Thus, FECA acts as a direct prohibition on political contributions from any person or entity that is a foreign government, a person outside of the United States, a business entity, or combination of persons organized under the laws of a foreign country or having its principal place in a foreign country.[59]

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[57] 2 U.S.C. § 441e(a).

[58] 2 U.S.C. § 441e(b)(1).

[59] 22 U.S.C. § 611(b)&(c).

Although foreign-owned U.S. corporations may organize and maintain PACs, the PAC must be solely under the direction of American citizens and may only solicit contributions from American citizens.[60] Thus, as long as a foreign-owned U.S. company has its principal place of business in the United States, and all those who contribute to and exercise decision-making authority for the PAC are American citizens, the corporation may have a PAC.[61]

III. THE PROPRIETY OF THE "REVOLVING DOOR"

A. Access to the Political Process Versus the Electoral Process

Mr. Chairman, as I stated at the outset, there is a critical distinction between access to the electoral process and access to the political process. Foreign persons are prohibited from participating in the U.S. electoral process.

A separate question is access to the political process. It is a fundamental tenet of our constitutional framework that government works best when all voices may be heard. Indeed, this very point was central to *The Federalist No. 10*, in which James Madison noted that "factions" were inevitable and that the system of government to be established under the Constitution was designed not only to accommodate their struggle for influence, but would function better as a result. By "factions" Madison meant what we now call "interest groups." And what he foresaw as an "advantage[] promised by a well constructed Union"[62] was the competition among interest groups to present their cases to the Congress in the hope of obtaining a favorable result. The public interest is best served when legislators cast their votes with more rather than less knowledge of the relevant facts and implications. Thus, competition fosters a more open and broadly representative system.

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[60] F.E.C. Advisory Op. No. 1978-21, Fed. Election Camp. Fin. Guide (CCH) § 5327 (July 17, 1978).

[61] F.E.C. Advisory Op. No. 1980-100, Fed. Election Camp. Fin. Guide (CCH) § 5548 (Sept. 19, 1980).

B. "Foreign Influence"

The question of foreign influence has three facets. First, what do we mean by "foreign"? Second, does this "influence" somehow jeopardize the national interest? Finally, is it in the public interest to prohibit former high-level government officials from working for or representing the interests of foreign-owned U.S. companies?

1. **"Who Is Us?"**

In his article *Who Is Us?*,[63] Robert Reich addressed one of the fundamental issues in the debate on the foreign investment "issue." By what measure do we distinguish (and of what relevance is such a distinction) between American and foreign-owned U.S. companies?

For most purposes, corporations established under the laws of a state of the United States are considered U.S. companies, whether American or foreign-owned, although exceptions exist in areas fundamental to the sovereignty of the nation, such as national security and the electoral process. "National treatment" is considered a cornerstone of U.S. international economic policy and is a principle the United States has negotiated for abroad.[64]

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[62] *The Federalist No. 10*, at 42 (J. Madison)(G. Wills ed. 1982).

[63] Reich, *Who Is Us?*, Harv. Bus. Rev. 53 (Jan.-Feb. 1990).

The proposition put forward by Prof. Reich, simply stated, is that the nationality of the owner of the shares of a company is increasingly irrelevant. What difference does it make if a U.S. company is American or foreign-owned? Does the nationality of the ownership of a U.S. company automatically contribute to American competitiveness? These questions are raised by the internationalization of industries and the globalization of markets, which have profoundly transformed business. Prof. Reich has correctly pointed out that "the competitiveness of American-owned corporations is not the same as American competitiveness."[65] Corporations base their business decisions not on the national interest but on the best interests of the corporation. Thus, an American-owned multinational may be American in name only; much of its workforce, manufacturing facilities, and assets may be located elsewhere in the world.

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[64] "[N]ational treatment of corporations means equal treatment with domestic corporations." Sumitomo Shoji America, Inc. v. Avagliano, 437 U.S. 176, 188 n.18 (1982) (interpreting the Friendship, Commerce and Navigation Treaty between the United States and Japan, 4 UST 2063, TIAS 2863, in a class action suit alleging a violation of Title VII of the Civil Rights Act).

[65] Reich, *supra* note 63, at 54.

American competitiveness, in contrast, is based on a highly skilled and educated workforce capable of adding value to the American economy through, among other things, advanced research. Accordingly, it would not make sense to provide government funds for research in advanced technology areas such as High Definition Television ("HDTV"), and restrict those funds solely to American-owned U.S. companies. To illustrate, consider one of AFII's founding members -- North American Philips Corporation ("NAPC"), a Dutch-owned U.S. company that has done business in the U.S. for 60 years, employs 55,000 Americans, conducts all of its research in the U.S., including research for a U.S. HDTV system, and has U.S. sales of over $6 billion. NAPC manufactures its TV sets in the United States and will make HDTV sets in the United States in manufacturing plants that are as modern as any in the world. Indeed, NAPC is exporting those sets all around the world, adding to its other exports that make it the 44th largest U.S. exporter.

If you compare NAPC to an American-owned company that conducts its research and manufacturing abroad, and you consider that a significant percentage of that company's stock is owned by individuals and organizations around the world, you might then wonder why such a company should receive preference in the granting of U.S. funds.

This simple illustration points up the degree to which the ownership of outstanding shares has become an unreliable guide to shaping policy.

2. Foreign Direct Investment and Academic Research

Often mentioned in the context of foreign investment is the question of whether foreign companies are stripping America of the fruits of its research. There is no doubt that academic research is important to America's competitive position in the world. However, the role played by international investors or their U.S. subsidiaries is greatly misunderstood.

America's research universities are indeed the jewel in our crown. None of America's economic competitors can rival them, either in number or quality. Part of the strength of America's research universities, and perhaps a large part, results from participation in the international cooperative network of organizations that conducts basic research.

Applied research is generally undertaken by industry and government and is aimed at specific commercial or national goals; consequently, the fruits may be proprietary or classified. By contrast, universities engage in basic or exploratory research motivated by intellectual curiosity. The products of this research, even the most incremental advances, are generally published as quickly as possible because researchers want their colleagues to verify the results and, thereby, to enhance their reputations. It almost goes without saying that these results are available to the international community. Foreign companies or their U.S. subsidiaries which build on this information are not taking away knowledge that is "owned" by the United States.

C. The Appropriate Role of Former Government Officials

One of the questions you have asked me to address, Mr. Chairman, is the appropriate role in the political process of former government officials acting on behalf of foreign-owned U.S. companies. On its face, the question implies that it is less appropriate for a former government official to undertake a given assignment on behalf of a foreign-owned U.S. company than on behalf of an American-owned U.S. company. It is not clear to me, however, how the propriety of the former government official's conduct is affected by the nationality of the owners of the company on whose behalf he acts. Insofar as foreign ownership is otherwise relevant, it is addressed by the FARA provisions already discussed. The more significant relationship, and the one that concerns me more, is that between the former official and the agencies in which he served. Clearly, a former government official should not have influence in particular matters with which he was directly involved.

We have had an opportunity to review that section of your bill, Mr. Chairman, aimed at prohibiting former government officials from representing foreign-owned U.S. companies and foreign governments. I would like to take a moment to address the ban it would impose on former government employees from representing foreign-owned companies and foreign governments.

The integrity of the post-employment conduct of former government employees is, of course, an appropriate public concern. The public interest demands that governmental decisions be rendered on the basis of legitimately relevant considerations, not extraneous or improper influences. Quite clearly, however, there is a proper role for the effective representation of the outside interest, including those of foreign-owned U.S. companies and foreign governments that are affected by contemplated U.S. government action. This, indeed, has been taken for granted in past Congressional proposals whose principal effect would be to defer such representation for a number of years depending on the type and level of the ex-employee's former position.

As to interests other than the representation of foreign-owned U.S. companies and foreign governments, the bill's modifications of existing law merely invite the question whether the changes are needed or worthwhile. The important issue -- and a debatable one -- raised by your bill concerns its two-year and five-year bans on the representation by senior officials. And here the controlling fact is not that the client is a foreign-owned U.S. company or foreign government, for if that were so, the ban would be of equal duration for all former government employees. It is, rather, the significance appropriately to be attached to the former employee's rank.

Now it is no doubt true that former cabinet members and the like have ordinarily had frequent occasion to deal with Senators and Congressmen and other high-level people and that those contacts have often given rise to relationships of mutual trust and confidence, if not of friendship. Standing alone, however, these circumstances may as easily serve the public interest as abuse it. It seems to me genuinely questionable whether the latter possibility justifies preventing for five years a foreign-owned U.S. company or a foreign government's seeking the benefit of the knowledge, experience, and wisdom of a former senior official. Indeed, the former employee's contribution will often be to moderate or limit the foreign-owned company or foreign government's position and facilitate the constructive resolution of difficult issues. On its face, therefore, the rationale for the ban is the presumption that sometimes officials will abuse their relationships with former colleagues and that the latter will let them do so. Any such presumption fosters cynicism and erodes the public trust without which no representative self-government is possible.

S. 3101 also raises another concern -- that it will add still another deterrent to government service. Given the discouragements already attributable to disclosure requirements and the serious lag in top-level government salaries, the broadening of bans on post-employment representation would add still another reason for turning down opportunities for public service. This is a particularly serious concern as it applies to presidential appointees who have to be recruited from the private sector and who will in any case (and usually all too soon) return to it.

I am also troubled by the fact that Title II of S. 3101 would appear to be premature, since the 1989 amendments to the

Ethics in Government Act of 1978[66] have not yet taken effect. Neither the Ethics Act nor the amendments, it should be noted, distinguish between government officials representing foreign-owned U.S. companies and those representing American-owned U.S. companies.[67] The amendments do prevent former government officials[68] from representing or advising foreign entities for one year after their government service.[69] I would like to take a moment, however, to review the Ethics Act, which addresses the conduct of former government officials representing both foreign and domestic parties in the political process.[70] Finally, I should note that at least 23 government agencies and departments have their own internal regulations on post-employment conflicts of interest.

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[66] Ethics in Government Act of 1978, P.L. 95-521, 92 Stat. 1824 [codified at 2 U.S.C. § 701 (1978)[hereinafter **Ethics Act**].

[67] 18 U.S.C. § 207.

[68] The revised section 207(f) covers senior personnel of the executive branch, members of Congress, committee staff, and a variety of other legislative offices. 18 U.S.C. § 207(c)-(e) (to be effective January 1, 1991).

[69] The revised Act defines foreign entities as a foreign government or foreign political party as defined by FARA. 18 U.S.C. § 207(f) (to be effective January 1, 1991). This would include any foreign corporation that as a part of its activities lobbied foreign governments. 22 U.S.C. § 611(f).

[70] 18 U.S.C. § 207, *as amended by* Act of Nov. 30, 1989, Pub. L. No. 101-194.

D. Ethics in Government Act of 1978

Title V of the Ethics Act prohibits former government officials from representing or advising parties in areas related to their government duties.[71] Work done on behalf of both foreign and domestic parties is covered.[72] The Ethics Act is divided into a permanent ban, a two-year ban, and a one-year ban on certain activities.

1. Permanent Ban on Certain Activities

The Ethics Act imposes a lifetime ban on any sort of representation on a matter in which a former employee was personally and substantially involved while in government service.[73] This includes any appearance in a professional capacity, either formal or informal.

2. Two-Year Ban

For two years following employment, a former government official may not represent a party in a matter where the United States is a party and the matter relates to his former official responsibilities.[74] There are two basic components to this prohibition. First, the former government official may not act as an attorney, agent, or representative for a person in a matter within his former official responsibilities.[75] Second, the Ethics Act bans advising, counseling, aiding, or assisting the representation of a person in a matter where the former government official had personal and substantial involvement.[76] This makes lobbying by a covered former employee on behalf of such a client a Federal offense,[77] punishable by a $10,000 fine and up to two years imprisonment.[78]

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[71] 18 U.S.C. § 207 (1988).

[72] 18 U.S.C. § 207(a)&(b).

[73] 18 U.S.C. § 207(a).

[74] 18 U.S.C. § 207(b).

3. **One-Year Ban**

Finally, the Ethics Act imposes a one-year ban on appearing before or communicating with a former agency on behalf of a principal.[79] That is, for one year a former agency employee may not make any oral or written communications to the agency on behalf of another party on any matter pending before the agency or within the agency's direct and substantial interest.[80] This prohibition has been called into question in light of the recent decision of the U.S. Court of Appeals for the District of Columbia in U.S. v. Nofziger.[81] That case held that section 207(c) is inapplicable unless the party acting has personal knowledge of all the facts making the communication illegal.[82] Nevertheless, the Ethics Act would still appear to apply to matters that the covered former employee knows were part of his duties.

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[75] 18 U.S.C. § 207(b)(i).

[76] 18 U.S.C. § 207(b)(ii).

[77] The ban on aiding and assisting applies only to certain "high-level officials." This includes persons paid according to sub chapter II of chapter 53 of title 5 or at a comparable or greater rate. It also applies to active duty military officers assigned a pay grade of 0-9 or above. Finally, it applies to persons with significant decision-making or supervisory authority as designated by the Director of the Office of Government Ethics. 2 U.S.C. § 207(d)(1).

[78] 18 U.S.C. § 207(c).

[79] 18 U.S.C. § 207(c).

E. Amendments to the Ethics Act

The amended section 207 of the Ethics Act,[83] which takes effect on January 1, 1991, directly addresses the representation of foreign entities.[84] It makes clear that any covered former government employee[85] must refrain for one year after leaving government service from advising or representing a foreign entity in certain circumstances.[86] The ban on representation prohibits communications between the former employee and any officer of a federal agency or department with the intent to influence him.[87] Moreover, the former employee is banned from advising a foreign entity on how to influence a decision of an officer of his former government agency or department.[88] The Ethics Act punishes violators with a fine up to $50,000 and up to five years in prison for a willful violation and one year for any other violation.[89]

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[80] *Id.*

[81] U.S. v. Nofziger, 878 F.2d 442 (D.C. Cir. 1989).

[82] 878 F.2d at 454.

[83] 18 U.S.C. § 207 (to be effective January 1, 1991).

[84] The Act defines a foreign entity as a foreign country or foreign political party, as defined by FARA. 18 U.S.C. § 207(f)(2) (to be effective January 1, 1991).

[85] The Act covers senior personnel of the executive branch, members of Congress, committee staff and a variety of other legislative offices. 18 U.S.C. § 207(c)-(e) (to be effective January 1, 1991).

F. Inter-Agency Restrictions

It should be noted that many Federal agencies have adopted their own post-employment guidelines.[90] These regulations act as a further check on the lobbying activities of former government officials. Moreover, they focus the attention of senior officials on potential conflict issues.

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[86] 18 U.S.C. § 207(f)(1) (to be effective January 1, 1991).

[87] 18 U.S.C. § 207(f)(1)(A) (to be effective January 1, 1991).

[88] 18 U.S.C. § 207(f)(1)(B) (to be effective January 1, 1991).

[89] 18 U.S.C. § 216(a)&(b).

[90] For an illustrative list of agency conflict of interest regulations, see 18 U.S.C.A. § 207 (Supp. 1990).

IV. CONCLUSION

Mr. Chairman, as I noted at the outset, the Association for International Investment represents a diverse membership whose otherwise differing views and perspectives converge on a single issue: their support for the free flow of international capital in response to market forces. We support U.S. international investment policy which accords national treatment to investors here and works for national treatment for American investors abroad.

Concerning the issues raised at this hearing, AFII's position is quite straightforward. And, as I noted at the outset, there are really two common themes: access to the electoral process and access by foreign-owned U.S. companies to the political process.

Simply stated, foreigners should not be involved in America's electoral process. But access to the political process is another matter altogether. American government functions best in light of all the facts, and that means that all parties should have a right to be heard.

With respect to the adequacy of the Foreign Agents Registration Act, I can only say that a broad net is cast by current law. The two relevant issues would appear to be whether the information currently required is sufficient to meet policymakers' needs and whether the groups from which the Congress seeks disclosure are adequately covered by current law. While we should be alert to possible gaps or omissions and quick to correct them, I am not at the moment aware of such deficiencies.

As to the appropriate role in the political process of former government officials acting on behalf of foreign companies or foreign-owned U.S. companies, I think they have one. Leaving aside the issue of who is "foreign," the question implies that it is less appropriate for a former government official to undertake a given assignment on behalf of a foreign-owned U.S. company than on behalf of an American-owned U.S. company. It is not immediately apparent why the propriety of the former official's conduct is affected by the nationality of the owners of the company that retains him. The real issue is the ethical considerations guiding the official's relationship with the former agency.

I would like to close by thanking the Committee for inviting my testimony.

The CHAIRMAN. Mr. Secretary, let me start from both your experience and mine. Now we know that there is an element of public perception of trust in the government here in Washington; for example, years back, just receiving a gift was bad. It was under the Eisenhower administration, when a vicuna coat caused the dismissal of a distinguished adviser to President Eisenhower, a former governor. More recently, in the last administration the receipt of a watch caused our Director of the National Security Council to step down.

So we became not only cognizant of not just the integrity of public servants, but the appearance of things.

There has been a change, as I see it. I can understand perhaps some cabinet members immediately after World War II helping to rebuild Europe and the Pacific. That was the whole idea, to develop free economies; and it has worked.

But now those economies have not necessarily operated as free and open and democratic. We all know what we have in Japan. I know, for example, we have an act in this country that a bank cannot participate in the business entity; but, of course, in Germany that is standard operating procedure there where they are part and parcel of, let us say, the construction firm. We have lost business that we have worked on overseas.

So there is a different kind of competition. There is a different atmosphere now with the fall of the Wall and moving into the trade war. Would you think under that circumstance that it would not be healthy, let us say, for cabinet members to leave to go to represent a foreign government immediately?

I know under the Ethics Act passed last year, the staff director of this particular committee is not supposed to talk to me for 1 year. There are so many things before this committee he has avoided contact on any kind of business. We think that is proper, and we want to make sure that the individual involved is not looking around for a job.

That is what we found in the Pentagon, that a colonel working on a particular contract who is near his 30-year retirement in the last 2 years starts thinking, well, I will work with this contractor and then when I get out I will get my retirement and I will get a sweet, cushy job here with the crowd I am controlling right now; if I am nice to them, they will be nice to me and that kind of thing.

So you say it is healthy for cabinet members to go and represent foreign governments as they leave their assignments here because they would bring about better agreements and better practices on the part of the foreign government?

Mr. RICHARDSON. I do not believe, Mr. Chairman, that they should ever be allowed to work on a matter with which they were directly involved, and of course the higher the level of the individual, the greater the range of things coming before his department or agency that are likely to have been things with which he had some direct involvement.

But with respect to prospective policies, it seems to me that while there is some period of time in which he should be barred from dealing with the agency at all, the question is, how long, and what the net effect of it is in these larger issues of—just take one that was touched on here today, for example—the opportunities for foreign investment in the United States. It was conceded that on balance this is in the economic interest of the United States, but it was suggested that we should demand reciprocity. Now, the question of public policy, whether to demand reciprocity or to continue, as we traditionally have, to press for national treatment, is a quite important question.

If a bill were introduced, let us say, to deal with the question of foreign investment by demanding reciprocity, it would not seem to me inappropriate for a former Secretary of Commerce or the Treasury to be employed by a foreign Government or a company to oppose it. Opposing it would be, indeed, the traditional U.S. position, and I think that there are a great many questions of that kind.

I have not, in fact, myself done much either in the way of lobbying or foreign representation. I have been registered twice, I think, under FARA, once simply to inform the Government of Angola what they would need to do to satisfy the U.S. that they should be allowed to join the World Bank and the IMF, and then I worked in connection with the up-dating of U.S. trade policies with respect to China, given the changes in that relationship.

Now, I think that in my own case, I was a contributor to the development of policy positions that I would defend as being in the interest both of the foreign Government and of the United States, and so therefore it does not seem to me that any ethical issue is presented by this.

So the question is then, well, yes, but are there problems of appearance or are there possibilities of abuse sufficient so that a blanket rule should be adopted? I simply do not feel that we have sufficient evidence of this, and the result is then, at the end of the road, to put you in a situation in which the Congress of the United States has said well, nevertheless we do not trust you, and that is what I mean by reflecting a progressive surrender to cynicism.

The CHAIRMAN. The question of direct involvement that comes right out of your code of professional conduct and my code of professional conduct under the American Bar Association. Both being lawyers, you cannot leave an entity, whether it be foreign or domestic, and work on one particular thing and then, against the code, represent the other side.

But the appearances too, even though absolutely Simon pure in the context of direct involvement, the appearances would be wrong in that context, I would think, ethically. I will just give a hypothetical example.

We have got Secretary Cheney, and no one questions his integrity. Suppose Secretary Cheney left and went to work for a law firm, Jones & Jones, and Jones & Jones represented the country of Russia, and Secretary Cheney never got involved directly in any defense question whatsoever with his being a member of that firm—he only worked on the Pepsi Cola part, let us put it that way—still, Jones & Jones, if not represented by themselves here, would be represented in Russia as having the former Secretary of Defense working for them, or a part of a firm that represented them.

You could have every one of these writers wondering what kind of defense matters, about our missilery. Of course, this is purely hypothetical—nobody has any idea that Dick Cheney would go and do such a thing.

But there could be others who have gone to represent these Governments, and I think in this competitive world in which we live, not only from a defense standpoint and defense security, but economic security is a big issue in hand now. I think perhaps we have got to put some kind of controls on it so they are not even subjected, as you indicate, to that ethical misgiving.

Mr. RICHARDSON. Well, Mr. Chairman, two points occur to me that at least need to be thought through. One is, to the extent that there are reasons to be concerned with the role of a former senior Government employee now working for a foreign company, to what extent should a distinction be made on the basis simply that it is a foreign company?

If there is a problem with his working, let us say, having served in a senior position at the Department of Defense and then later representing a foreign company interested in participating in some defense contract, why, then, should the ban be longer in the case of the foreign contractor than the U.S. contractor?

There is also the question you touched on with respect to economic security. The U.S. certainly has profound interests in economic security and the speech that Eisenhower made, about which the only thing generally remembered is the reference to the military-industrial complex, was a speech in which he appealed for recognition of the necessity for balance in maintaining the national security as between what we did directly through the military establishment to maintain that security and what we did to maintain the stability and encourage the growth of the economy. So that I think is clearly true.

But while I think the national concern with economic security is clearly valid, the reality is that we are moving into a global economy. Many of the challenges to industrial development in the future rest on extremely expensive kinds of research, and when you see a company like Texas Instruments, for example, or other American companies, becoming associated with foreign companies in research projects, it is a reflection in part of their recognition that they simply cannot go it alone.

What we are seeing, I think, in the case, for example, of Japan, has been a transition from the policies of export penetration by Japanese companies through a phase in which Japanese multinationals had plants abroad, but still regarded the role of these plants as serving export interests primarily, to the emergence of Japanese companies as transnational corporations of the kind that many European and U.S. companies had already become.

These entities owe no real allegiance to any nation. The place of their corporate domicile, or the preponderance of their shareholding, is really not a significant factor governing their decision-making.

My own view is that the question that really ought to be addressed is the ultimate question of corporate accountability on the part of these corporations in ways that, as far as I can see, cannot adequately be approached at all by purely national laws.

I have heard senior executives and bankers many times, and increasingly often, refer to the irrelevance of national boundaries for corporate decision-making by that kind of transnational entity. What I am saying, I think, Mr. Chairman, is that we are dealing with the phenomenon of capital flows responding to opportunity, rates of return, and considerations of risk that have large-scale effects that do need to be looked at, but which, in my view, are not significantly addressed by the kinds of responses that they ordinarily get.

The CHAIRMAN. The committee is particularly indebted to you. Senator Robb particularly regretted having to leave early because he had another commitment.

Senator Exon.

Senator EXON. Mr. Richardson, welcome back once again. We are always very pleased when you come up to testify because I think you know of our understanding of what you have done over the years and what you are trying to do in the future.

I understand as I walked out of the room a few moments ago to keep an appointment I had to keep that you, too, are concerned about the information bill known as the Exon-Lent bill that I introduced here and which Congressman Lent introduced over on the other side for the exchange of information is being held up, and that your organization is going to do what you can to see what is holding that bill up because you happen to feel that exchange of information that the President requested is a good one. Is that correct?

Mr. RICHARDSON. Yes, sir. I strongly support that legislation. I skipped the fact, although it is in my statement, Mr. Chairman, that I am appearing here today as the Chairman of the Association for International Investment which has worked with Senator Exon and his staff.

The CHAIRMAN. Could you submit the composition of that group, the membership, later on? May we have that?

Senator EXON. We would like to have it. Thank you very much, and I thank you for your consideration, Mr. Chairman.

Mr. RICHARDSON. We will certainly see if we can find out what the hangup is and would take advantage of any opportunity to urge that the bill be allowed to go through.

The CHAIRMAN. Very good. Thank you very much, Mr. Secretary.

Mr. Charles Lewis is our next witness, Chairman of The Center for Public Integrity.

Mr. Lewis, the committee welcomes you. My understanding is that you have not previously testified before a Congressional committee. We want you to be at ease and as relaxed as you can. Your statement in its entirety is included now in the record. The Members have had that, and you can deliver it in its entirety as you wish, or you can highlight it in light of the fact that we have one other witness that we wanted to get to before lunchtime.

STATEMENT OF CHARLES LEWIS, CHAIRMAN, THE CENTER FOR PUBLIC INTEGRITY

Mr. LEWIS. Thank you, Mr. Chairman. Thanks for the opportunity to appear here. I will certainly highlight.

Very briefly, because we are a new group, the idea for The Center for Public Integrity is to look at public service issues and ethics-related issues and to do substantial studies, 100 pages or more, about various issues: S&L's; education; trade; intelligence; et cetera.

I am here today because we have been working for about 10 months on a study of the Office of the United States Trade Representative's Office. We have several people who have been helping us. We have interviewed over 45 former USTR officials going back to 1962. We have checked every government record, foreign agent registration records, House and Senate lobbying records, Office of Government Ethics records, USTR General Counsel records and published records and things. I just wanted to say a few things about what we found to date.

The CHAIRMAN. Before you give those findings, Mr. Lewis, who is on your board? I tried to identify that. It is new to me. Do you have an advisory board or a board of directors?

Mr. LEWIS. Yes. The board of directors is Charles Piller, who is an author on the West Coast; and Alejandro Benes who is in television on the East Coast in New York; and myself. That is the board.

The advisory board is Arthur Schlesinger, James McGregor Burns, American Enterprise Institute, William Schneider, James David Barber down at Duke University, Father Theodore Hesburgh at Notre Dame, president emeritus. We have several people from the news media or who have had distinguished media careers: Hodding Carter; Bill Kovach, the curator of the Nieman Foundation at Harvard, former "New York Times" Bureau Chief here; Texas columnist Molly Ivans; the former editor and chairman of "the St. Petersburg Times" and former president of the American Society of Newspaper Editors, Eugene Patterson; the Dean of the Annenberg School of Communications at the University of Pennsylvania; the head of AFL-CIO, Lane Kirkland; the head of AFSCME and UAW, Owen Bieber; Gerald McEntee; Jeff Faux, Economic Policy Institute President; Ira Magaziner, an author and international business consultant.

I probably missed someone there, but that is an idea.

The CHAIRMAN. That is good. Thank you.

Mr. LEWIS. Sure.

One last thing before I tell you about our findings. I want to make sure everyone understands, I am not an expert on the intricacies of trade policy. I did study it, and I have a Master's from Johns Hopkins, but that is not why I am here.

From our perspective, the issue here today is not trade or who is winning or losing or foreign versus domestic. The issue is that America has lost public service as an ideal. Our upcoming report and my remarks today reflect more than anything else a deep concern for the integrity of the public policy process and the overall state of public service today.

First, several findings. Maybe some of them will not be surprising in light of some things you have heard this morning.

There have been over the period of close to 20 years a substantial number of former USTR officials at the highest levels who have gone to work for various foreign companies and foreign governments. Our completed report will include a detailed rendering of who has been working for whom with great specificity since leaving government.

We will also in that data include post-employment data about everyone, whether they work for Mitsubishi or Motorola.

Second, this revolving door phenomenon as it pertains to USTR officials lately working for overseas interests is a fairly recent phenomenon. Just very briefly, trade policy in this country from 1934 to 1962 was done by the State and Commerce Departments. Beginning in 1962, the USTR became a player increasingly, but all the way up to the mid to late 1970's people who went into trade were trade professionals. They wanted to work in government their whole life in trade. It was something they believed in, liberalizing trade, sort of in the wake of Smoot-Hawley, et cetera.

This is not me speaking. This is from the interview material. Somewhere along the line, many, many people inside USTR started to notice that several people were coming into the agency for different reasons than before. As one person who had been there for 30 or 40 years said, everyone suddenly had calling cards, and they were all looking for something later after they left government.

There are a few cases that I wanted to point out along these lines. Consider the case of Stephen Saunders back in 1982. He was an Assistant U.S. Trade Representative for Congressional Public Affairs. He left USTR at age 35, and 9 months later he went to work for the Japanese Embassy. According to the Justice Department records, last year his small consulting firm, Saunders and Company, represented five foreign clients, for of them Japanese, including the embassy, and he and/or his firm received $240,000 in fees and expenses.

There are numerous examples of this kind of thing. The situation is troubling. It raises a panoply of fascinating questions, some of which you have alluded to this morning.

Can a top trade official be a tough negotiator if his peers are leaving to make huge sums of money from Hong Kong or Japan or West Germany?

Can a U.S. Trade negotiator making $70,000 or $80,000 not be affected by the knowledge that when he or she leaves he may be worth two or three times his former salary?

Can a U.S. Trade official honestly say he or she is unaffected when a former friend and colleague approaches the agency on behalf of the French or British seeking some sort of special consideration?

Will American companies trust U.S. Government trade officials with proprietary information about their technology initiatives and plans if they fear the officials to whom they are imparting and entrusting that sensitive data are then going to go to work for overseas interests, some of whom are their direct adversaries?

The point here is that trade policy and trade agreements have to have credibility. The public must be confident that official trade decisions have been made strictly, as in all government decisions, on the merits.

I turn again to another case, the case of Edward Gottfried. For 31 years, from 1954 to 1985, he was an official in the Federal Government, most recently in the Commerce Department. He then became a consultant for a few countries and had a newsletter, and then he came back in the USTR in 1989. That is the only reason I would know about him.

He was entrusted with negotiating a trade agreement with Pakistan. The agreement was concluded in December of 1989. A few months later he decided to leave USTR, and his last day was April 28. Within 2 weeks he was back in Karachi and Islamabad, trying to become a lobbyist for Pakistan.

It was reported in the English language daily Dawn in Islamabad that the amount was $1 million for 2 years that they were seeking. The person who was quoted in the article as being the one that they were talking to about this agreement was also the one who was a co-signer on the memorandum of understanding in the treaty.

This has never been reported in this country, only in Pakistan. I mention it this morning because I think it is a fascinating example. The reason it is fascinating is, in a way, because of what I am about to tell you.

I spoke with Mr. Gottfried about this. He said that "there wasn't a damn thing wrong" with what he did, that he had checked with all the ethics officials and authorities in his agency and in other parts of the Federal Government, and there was absolutely nothing wrong with going back 2 weeks later after leaving the agency to talk to them, even if it was proposing to represent Pakistan's textile interest in this country. He still saw no problem with that.

In fact, beyond that, the USTR General Counsel's Office told him, he claimed—and I sort of have the sense that they did from my talks with the USTR—that there is nothing legally wrong with this instance.

So I bring it up for this REASON. How and why has this become so acceptable that it gets that kind of a response institutionally in the Federal Government? It seems startling to me.

The point is the revolving door phenomenon is widespread. It is not just with political appointees, it is also with trade lawyers—very heavily in that direction. It is obviously bipartisan, and to use a phrase Meg Greenfield used back in the Deaver days about Federal officials cashing in, in general, when they leave it is truly ecumenical.

One last thing I wanted to mention. There is one other thing that stands out, and it is also startling. Historically, looking over the 28-year history of this fascinating group called USTR that coordinates all trade policy, in the past—well, currently, the top officials there, the most important and most senior officials running USTR before coming into USTR in early 1989 worked for various overseas interests, and that was not the case in the past at USTR.

Christian Herter, William Eberle, Frederick Dent, Robert Strauss, Reuben Askew, William Brock, Clayton Yeutter, nor for the most part their senior staffs, none of them ever had that kind of extensive foreign representation in their backgrounds prior to Government service.

Now, I wish I could explain to you exactly what all this means, or what the historic and public policy impact of that is, and I am afraid I do not exactly know the answer to it, but I am pointing it out because it stands in very stark contrast.

Just so that we are clear what we are talking about, before 1989 Carla Hills represented Daewoo Electronics, Matsushita, Panasonic and other clients. Deputy USTR S. Linn Williams represented Nissan, Nomura Securities, Oriental Finance and other clients as an attorney in Tokyo. Deputy USTR Julius Katz was chairman of a company which did public policy analyses for 28 foreign clients in 1988 alone, including the Japan Trade Center, Toyota, Cartier International, et cetera.

A couple of levels down there is an official, a deputy assistant U.S. Trade Representative for Japan Affairs, Merit Janow, who formerly worked at Skadden, Arps in New York, and some of the cases she worked on involved acquisitions of American companies by overseas companies, Japanese included.

Anyway, that concludes my highlights part, and I thank you.

[The statement follows:]

STATEMENT OF CHARLES LEWIS CHAIRMAN AND EXECUTIVE DIRECTOR, THE CENTER FOR PUBLIC INTEGRITY

Mr. Chairman, members of the committee, I appreciate this opportunity to discuss with you today the post-employment practices of U.S. trade officials. First, some brief background.

For 11 years I did investigative reporting at ABC News and CBS News, most recently as a producer for the program, "60 MINUTES." It is ironic to be sitting here this morning, because the last story I investigated and produced for "60 MINUTES," we interviewed Pat Choate and Elliot Richardson and others about this very topic of the "revolving door" to foreign lobbying.

For more than a year, I have been organizing the Center for Public Integrity, to better understand what has been happening to public service. The Center is an educational, non-profit organization with an Advisory Board of distinguished Americans. We are examining public service and ethics-related issues in Washington, by combining the substantive study of government and in- depth journalism. Original, hard-hitting analysis and the data to support it cannot be squeezed into two minutes on-the-air, or 30 column inches. Our idea is to publish exhaustive, fact-filled Center REPORTS, which serve as vital reference material to journalists and academicians alike. The Center's first two studies, on trade and intelligence, will be published later this fall. Other Center REPORTS underway will address topics as diverse as the environment, the savings and loan crisis, education and Congress. The Center has a broad if modest base of financial support, from foundations; corporations—from energy to textiles, from electronics to chemicals; more than a dozen national labor unions; individuals; and revenue from the news media.

The activities of America's top trade officials when they leave government, cannot be examined in a vacuum. Public officials who have handled trade matters are not really that different from public officials in other areas. What has been happening in trade in Washington is a troubling part of the "quiet crisis" facing the entire federal government today.

The fact is, public service is not what it once was. As the National Commission on the Public Service, popularly known as the Volcker Commission, concluded, "there is evidence on all sides of an erosion of performance and morale across government in America. Too many of our most talented public servants—those with the skills and dedication that are the hallmarks of an effective career service—are ready to leave. Too few of our brightest young people—those with the imagination and energy that are essential for the future—are willing to join."

At the same time, lobbyists in Washington have become in Washington what investment bankers became in the Eighties in New York. There are huge sums of money to be made, and few real controls.

There was a time not too long ago when government and public service were held in high esteem and respect, when this country's best people were drawn to Washington to work for the public good, in the public interest. In recent years, however, there seems to have been a perversion of public service. Money has become the dominant influence in our political system, particularly in how officials are elected, in the day-to-day mechanics of public policy in Washington, and in the post-employment practices of public officials.

Several disturbing scandals have wracked this town the past few years, scandals which all seem to involve large numbers of people, large sums of money, and former officials attempting to cash in on their influence and access. The HUD scandal, the S & L debacle, the Defense procurement "Ill Wind" fraud; Iran-Contra; the entire Michael beaver controversy; AND the phenomenon of former top trade officials going to work for foreign governments and foreign companies, all have a similar, systemic theme.

As Independent Counsel Whitney North Seymour put it in the beaver matter: "too much "loose" money and too little concern in Washington about ethics in government."

Not surprisingly, for many Americans, confidence in public officials and in Washington is at a low ebb. So is citizen participation and involvement in the process of government. As the New York Times put it, "Americans are being insulted by a political culture that places private gain ahead of public trust."

Just how commercialized has our society and public service become? Can you imagine former Secretary of State Dean Acheson doing airline commercials, or former President Dwight Eisenhower receiving $2 million from Fujisankei Communications for two 20-minute speeches in Tokyo?

Is it any surprise, then, that this cynical, mercenary atmosphere might also permeate the area of trade policy?

Still, no one has ever taken a micro look at our top trade officials, over a period of several Administrations, Republican and Democrat. So, for the past 10 months, I have been looking closely at the Office of the U.S. Trade Representative (USTR) an agency of the Executive Office of the President charged with responsibility for coordinating and administering overall trade policy for the U.S. government. Six reporters and researchers have worked with mein this unprecedented USTR study, more elaborate and comprehensive in scope than anything undertaken in the past, in scholarly journals and in the mass media generally. Besides a basic history of the evolution and development of USTR as an agency, the study will include detailed biographies profiling America's top current and former trade officials since 1974, the year of the historic Trade Act which among other things elevated the Office to Cabinet-level status. The levels of education and overall intellectual caliber of the personnel in this agency are probably unsurpassed throughout the entire federal government. We have attempted to pull virtually every obtainable federal record—from the Justice Department, the House and Senate, the Office of Government Ethics, the USTR General Counsel—about the 70 men and women who have served the United States at the highest levels of trade policy since 1974 to today. We have methodically searched published items about these officials, from the major daily newspapers and weekly magazines, to the more specialized trade, law and business publications. The Center has attempted to locate and interview EVERY senior USTR official since 1974, 53 former officials strewn from Florida to Minneapolis to Paris, plus several of the current top USTR officials in Washington. To date, we have interviewed 45 former senior USTR officials, actually dating back to the year the Office was created, 1962. Those few persons choosing not to respond to our telephone calls and letters, have been each sent a rough draft of their biography, by registered mail. Every former official declining to respond has been given two weeks to correct any portion of the biography.

We have also interviewed trade experts in Washington, in industry, in labor, in academia, on Capitol Hill, and in the trade media, for any specific insights about these former officials or their policies.

Our Center REPORT on the Office of the United States Trade Representative is nearly completed, and will be published in a few weeks. An enormous amount of data has been amassed, and there are certain trends which are directly relevant to this hearing. Despite all of the research we have done, let me emphasize that I am no expert on the intricacies of trade policy, or what it ought to be. Indeed, from my perspective, the issue is not trade, or who's winning or losing, or foreign vs. domestic. The issue is that America has lost public service as an ideal. Our upcoming REPORT, and my remarks today, reflect more than anything else a deep concern for the integrity of the public policy process and the overall state of public service today.

First of all, a substantial number of USTR officials at the highest levels have gone on to work for foreign companies and foreign governments. Many of these former officials have gone back and interacted with some of the same people and same governments and same issues as during their USTR employment. Our completed REPORT will include a detailed rendering of who has been working for whom, with great specificity, since leaving government. Our REPORT will include extensive post-employment data, whether an official has gone on to work for Mitsubishi or Motorola.

Second, this revolving door phenomenon as pertains to USTR officials later working for overseas interests, is a fairly recent phenomenon. From 1934 and the Reciprocal Trade Agreements Act, to 1962, trade policy in Washington was handled principally by the State and Commerce Departments. From 1934, to 1962 and the addition of the Office of the Special Trade Representative, as it was then called, into the late Seventies, federal trade officials all had a fairly common pattern. They were trade policy professionals and for many of them, liberalizing trade around the globe was not just a job, it was a cause. One of the most respected trade professionals who served in the State Department and at USTR, told us that, "These were career people, this was their career, and they regarded it as their career, and they weren't looking for something else... There was great continuity here ... Somewhere along the line, people coming into the USTR did not look at this job as a career. They looked at this job as a step up in their careers. They put out calling cards. I never had a calling card." According to this gentleman, today there seems to be less dedication, and people seem to be less committed to a life of public service, "The turnover you now have in the USTR, we NEVER had when I was working at USTR."

The first, book-length public discussion about former U.S. officials and the revolving door to foreign lobbying in Washington actually occurred in Japan. In 1980, Yoshi Xomori and Toshio Obi wrote Japan Lobby, detailing among other things the activities of former Special Trade Representative William Eberle and former Deputy STR Harald Malmgren in the late Seventies. Eberle and his Manchester Associates landed a $12,000 monthly retainer from Nissan. Malmgren and his Malmgren, Inc., received $300,000 from five Japanese electronics companies. The Center has had a section of the book translated from Japanese. Komori and Obi, citing the Malmgren contracts, criticized Japanese lobbying in Washington as "next to idiotic," calling the fees paid to Malmgren "out of order" with standard lobbying fees in Washington.

In the late Seventies and Eighties, as America's international trade position became more critical, large sums of money, literally hundreds of millions of dollars—for public relations, traditional lobbying, information monitoring, economic and political analysis, legal representation, etc.—began flowing into Washington from abroad.

Around this time, more and more USTR officials began to leave government and work for these overseas interests. And it wasn't just the highest, most experienced officials from USTR. Consider the case of Steven Saunders.

After less than 18 months as an Assistant U.S. Trade Representative for Congressional and Public Affairs, Saunders left USTR in early 1982, at the age of 35. Nine months later, he was on retainer to the Japanese Embassy. According to Justice Department records, last year his small consulting firm, Saunders and Company, represented five foreign clients,–four of them Japanese including the Embassy, and received $240,000 in fees and expenses.

Unfortunately, there is no shortage of such examples. The situation is troubling, and it raises a panoply of fascinating questions: can a top U.S. trade official be a tough negotiator if his peers are leaving to make huge sums of money from Hong Kong or Japan or West Germany? Can a U.S. trade negotiator making $70,000 or $80,000 not be affected by the knowledge that when he or she leaves, he may be worth two or three times his former salary, especially to foreign interests? Can a U.S. trade official honestly say he or she is unaffected when a former friend and colleague approaches the agency on behalf of the French or British, seeking some sort of special consideration? Will American companies trust U.S. government trade officials with proprietary information about their technology and industry trade initiatives and plans, if they fear the officials to whom they are entrusting the sensitive data will soon be working for overseas interests, including their business adversaries?

I believe this revolving door problem in trade is eroding trust, morale and confidence in government. It is difficult to overstate the seriousness of this matter, in light of the huge trade deficits of the U.S., and the increasing realization that America's economic competitiveness in the world has become a critical component of our national security and financial well being.

Trade policy and trade agreements must have credibility, and the public must be confident that official trade decisions in government have been made strictly on the merits and the substance. That credibility and that confidence are eroding.

Take the case of Edward Gottfried. He worked in the U.S. government from 1954 to 1985, and for ten years, from 1975 to 1985, he was Deputy Director of the Commerce Department Office of Textiles and Apparel. In that position, he developed U.S. trade negotiating positions, participated in several international trade negotiations, and was the deputy director for textiles and apparel.

He then left government, and formed his own consulting firm, Trade Consulting Services, and advised other nations, including China, on international trade matters. His specialty continued to be textiles and apparel, and he briefly published a newsletter on that subject.

Gottfried came back into government in 1989, and joined USTR as a special textile adviser and negotiator. He headed delegations negotiating trade agreements with the Soviet Union, Pakistan, India and Egypt. He also defended U.S. trade positions before groups of the General Agreement on Tariffs and Trade (GATT).

The Pakistan agreement Gottfried negotiated, was concluded in Islamabad in December, 1989, and it became effective January 1 of this year. Talks to restructure the earlier bilateral agreement had been initiated months earlier by Prime Minister Bhutto during her state visit to the U.S. According to the United States Information Service news release issued December 13, the agreement "enables Pakistan to ship much higher volumes of textiles to the U.S. in many product categories." According to the Commerce Department, Pakistan imported $377 million worth of textiles to the U.S. last year; official estimates for 1990 are $450 million, an increase of about 20 percent.

In late December and early this year, Gottfried began planning his departure from USTR. He submitted memoranda to the USTR General Counsel as to his intentions and his recusals. A Freedom of Information Act request by the Center to USTR for the Gottfried memoranda has been denied.

Gottfried's last day at USTR was April 28, 1990. Upon his departure from government again, he received a glowing letter from U.S. Trade Representative Carla Hills, who said: "You have done a superb job on many negotiations. Clearly, the most outstanding example of your efforts was the textile negotiations with Pakistan. Your hard work and creativity were essential in crafting a solution that was politically acceptable to both sides, thus strengthening our political and economic relationship with Pakistan."

Within two weeks, he was back in Pakistan.

According to the Pakistan English language daily newspaper, Dawn, in an article entitled, "Textiles: Any Buyer for U.S. Lobbyists' Services?" on May 14, 1990, Gottfried and another American had been in Islamabad and Karachi days earlier attempting to negotiate a contract to represent Pakistan textile interests in Washington, among other services offered, at a cost estimated by the newspaper to be $1 million for two years. The full text of the article was sent immediately by the U.S. Embassy in Islamabad, to USTR officials in Geneva and Washington.

The Pakistan Government official quoted in the newspaper account about the lobbying proposal, was Federal Commerce Secretary Saeed Ahmad Qureshi, "The Ministry of Commerce is looking into the offer but we cannot bear the cost. If the private sector can foot three-fourths of the bill, only then we may consider it."

Saeed Ahmad Qureshi is the same man with whom USTR official Edward Gottfried had negotiated and signed a Memorandum of Understanding back in December, 1989, five months earlier.

The Center has several documents about all of this, including the Memorandum of Understanding with Pakistan, the telegram sent from Islamabad to Washington with full-text of the article, a copy of the formal announcement mailed out, and a brochure, of International Public Strategies, the Washington consulting firm Gottfried has joined as Vice President for International Trade.

The Gottfried episode has not been reported in this country. The deal never went through, and the publicity in Islamabad probably was not helpful in that regard.

For the Center REPORT we are preparing, I spoke with Mr. Gottfried about all of this. He confirmed the basic facts, and said that regarding his post- employment practices, "there wasn't a damn thing wrong" with returning to Pakistan with a proposal for representation. Gottfried said, "I was very honest." He said he spent considerable time finding out what he could do and not do under the various ethics laws, and the USTR General Counsel's office in fact subsequently told him that he had done nothing legally wrong.

The purpose of mentioning this is not to single out Edward Gottfried—the name could be Jones or Johnson, the country could be Hong Kong or Honduras, the product negotiated could be rice or radios. The point is that what Gottfried did is today acceptable practice in trade policy public service in Washington.

How and why has this become so acceptable?

In our study, we have found no instance of a USTR official ever being accused of illegality or prosecuted. For that matter, since the Watergate reform years of the mid-Seventies, no former public official has been successfully prosecuted for violating conflict-of-interest lobbying laws.

This revolving door phenomenon is not aberrational, and it does not just occur with political appointees or only with trade lawyers. The revolving door to foreign lobbying by USTR officials is bipartisan, and to use Meg Greenfield's well-chosen word about the general practice of former federal officials cashing in on their access, experience, and sometimes even inside knowledge, what we are describing here is "ecumenical."

Just how pervasive and ecumenical it has all become, is epitomized by the case of Michael Smith, probably America's toughest, most respected trade negotiator of the past 15 years. Ambassador Smith left USTR in late 1988, concluding 30 years of government service, and serving three Presidential administrations in the office of the U.S. Trade Representative.

In December, 1988, Secretary of State George Schultz presented Michael Smith with the Wilbur J. Carr Award. The inscription reads: "Your stature in the international trade policy arena, your mastery of the issues and your strength as a negotiator have made you the most effective trade official of this decade in the United States Government."

Upon leaving USTR, Smith made public statements about how he intended to work for American firms attempting to do business abroad. He became president of a new consulting firm, SJS Advanced Strategies, which is an adjunct to the large international trade law firm, Steptoe and Johnson.

American firms have not beaten a path to his door—or any former USTR officials' door. A few domestic interests did retain Smith and his firm—Honeywell, Motorola, the American Textile Manufacturer's Institute, for example. But according to the Justice Department, Michael Smith is now also a foreign agent. SJS Advanced Strategies and Smith now also represent foreign concerns, including the Canadian Sugar Institute, Nippon Steel Corporation, the Japan Iron & Steel Exporter's Association, Caribbean ISPAT Ltd., and the Embassy of Canada.

Several former USTR officials have told us that the postemployment opportunities in Washington are primarily with overseas companies and governments. This is the largest, most lucrative market in the world, and foreign companies wanting to sell their goods here must master the array of federal trade agencies and arcane bureaucratic procedures. International trade lawyers, some of them former USTR General Counsels, have had a bountiful decade representing foreign and domestic clients in antidumping cases, countervailing duties cases, Section 301 (unfair restrictions on imports) cases and other matters.

It is more difficult for non-lawyer, former USTR officials to land foreign clients, than for attorneys. There are cases of former USTR officials who are non-lawyers, who have tried and largely failed to represent foreign clients here in Washington. And the case of Ambassador Smith is the best example of the structural dilemma central to all revolving door discussions in Washington, from the Pentagon to the IRS to the Patent Office. Does anyone expect someone who has given 30 years of his life to public service at the highest levels, who is an international expert in trade, to move in the autumn of life to an entirely different field of endeavor? Of course not.

The question is what is acceptable, and what should be, acceptable conduct in moving from the public to the private sectors. And what has been happening in Washington with former U.S. trade officials representing non-U.S. interests, doesn't happen with foreign government trade officials in Tokyo or Ottawa, London or Bonn. There needs to be an extensive, comparative study of the international anomaly the U.S. has become in regards to its former trade officials. Part of the reason we are different from our allies, is that the public sector/private sector relationship in our society is markedly different from other societies. There is a long history of cross-pollination between government and nongovernment.

And so we come to today, and the current USTR senior officials. As regards this revolving door issue, looking back, over the past 28 years since a trade office was formed in the Executive Office of the President, there is one striking historical difference about the current USTR regime under Ambassador Carla Hills.

Several of these highest, most important USTR officials, worked for foreign companies and foreign governments in the years PRIOR to joining USTR. That was not the case with Christian Herter, or William Eberle or Frederick Dent or Robert Strauss or Reubin Askew or William Brock or Clayton Yeutter, nor for the most part with their top staff.

Before 1989, Hills represented Daewoo Electronics Co., Ltd., Matsushita, Panasonic and other clients. Deputy USTR S. Linn Williams represented Nissan, Nomura Securities, Orient Finance and other clients as an attorney in Tokyo. Deputy USTR Julius Katz was chairman of a company which did public policy analyses for 28 foreign clients in 1988 alone, including the Japan Trade Center, Toyota, and Cartier International. Deputy Assistant U.S. Trade Representative for Japan Affairs, Merit Janow, formerly worked briefly at Skadden Arps in New York, and in some cases assisted Japanese firms to acquire American companies.

The impact on U.S. trade policy, and overall significance of this is unclear, but historically it does stand out.

Meanwhile, traditionally about midway through an Administration, a number of senior political appointees leave. For the current crop at USTR, who leaves when and where they go, will be more interesting than usual, because of the new ethics law which goes into effect in January, 1991. Starting then, USTR officials leaving government will be prohibited from working for foreign clients for one year.

The new restrictions are expected to hasten the exodus of trade officials leaving USTR and other federal agencies. If they leave before midnight on New Year's Eve, the new law won't apply. Then again, it might not affect them anyway—all such laws are replete with loopholes, and seldom is enforcement even attempted.

This is the state of public service in trade policy in 1990.

The CHAIRMAN. Thank you, Mr. Lewis. We apparently are in the hands of the Philistines.

Let me say that if you find with Mr. Goffried checking with the counsel's office and saying absolutely nothing is wrong, ethically or legally, then of course that is an indictment of us here in the Congress. We certainly ought to look at the laws and the ethical requirements and revise them upwards if that is the case. That is all I can say right now. You certainly opened this Senator's eyes.

Senator Exon?

Senator EXON. Mr. Lewis, thank you very much for being here. It is very interesting testimony indeed. Let me ask you just a couple of questions, because I know the Chairman wants to move along.

It is pretty clear that America is moving into an era, I think, that we should all recognize, where global power is defined increasingly in economic strength and economic power. That brings us to the question of, you know, where are we going and how we are going to get there? That is where we want to be, and anyone who doubts that should simply take a look at Saudi Arabia today, where oil has brought the world the brink of war.

There were some interesting comments in the book that was referred to this morning, and I think you were here and heard most or all of that. "Time Magazine," in reflecting on this book, posed what I thought was a rather interesting question about the book and the agent's influence that are referred to therein, and they asked—they, "Time Magazine"—asked this QUESTION. What are the demands of patriotism in a world where economic rivalry has seemingly replaced the cold war?

I think that maybe that is a far-fetched question, and maybe it could be asked in better terms, but I think you understand what I am getting at.

Is this not a time when the United States of America should take a look at all that is going on with our trade policies, and indeed, maybe this is a good time for good old American patriotism, if we are going to have a chance of assuring the United States of America that place that it rightfully should play in the 21st Century?

Mr. LEWIS. I appreciate your comments. The thing that is really fascinating to me is, in talking to these former officials, many of whom are registered at the Justice Department and many of whom are representing major, major multinationals around the world is, on the patriotism subject they all believe what they are doing is patriotic. It almost does not enter the discussion.

Anyway, it is a fascinating point that you raise, and I have tried in my work just to document and lay out the facts, because everyone always has their own definition of what is patriotic and what is not, and I do not want to start going down that road.

But the other part of your question that I started to hear, which people talk about, is the globalization issue, and is this not a little bit arcane? Are we not making a big thing out of nothing? Is it not that we are all one big, happy world, et cetera?

The other thing that "Time Magazine" article mentioned that you alluded to was the atmosphere in Washington of laissez-faire ethics, and the fact of the matter is, in this world we still have nation states, and they still have commercial and economic interests, and the officials who are in Government, no matter what part of Government they are in, are expected to do what is in that nation's interest vis-a-vis the rest of the world and until the U.N. gets a lot more powerful, or something else happens that I do not know about, that is the way it is supposed to work, is the what I always heard. Anyway, that is what I would say to that.

Senator EXON. Well, as a follow-up to that, you heard—have you been here all morning?

Mr. LEWIS. Yes.

Senator EXON. You heard my reference earlier to the fact that when the Exon-Florio law, which was specifically designed to give the President the tools to stop takeovers of American companies by foreign interests that would adversely affect our national security, the top officials of the Treasury Department came over and cautioned me that my bill would have a "chilling effect" on investment in America.

That indicated to me that, indeed, the buying of America through one form or another has gone very high up on our Government, almost to the place—not because anybody likes it, but we are quickly getting ourselves into a place where, indeed, the threat that was made by a prominent Japanese politician that one way to bring pressure to bear on America, if they ever tried to do anything about the trade imbalance between Japan and the United States, would be to stop buying Treasury bills.

Now, maybe some people have not thought that remark through, but I really believe that it is a major, major problem that we have—the buying of America—while people do not generally understand just what a serious threat that is to our economic strength in the future. Do you agree with that?

Mr. LEWIS. I do agree. I have the general sense that most people do not see the connection between the overconsumption and what is happening with our economy and the price we are paying for that at the other end, and in fact, regarding the national security aspects and internal Government decisions in that regard, we sort of started a second study along the trade lines into that whole national security area, because there are some really fascinating issues that are starting—well, hopefully will be emerging in the coming months that we are starting to find in that very regard that you alluded to.

The one other thing I wanted to point out that did not get mentioned much this morning, which is kind of fascinating to me, and that is that foreign countries—Tokyo, Bonn, all over the world with the exception of the United States—the idea of public officials leaving Government and going to work for overseas Governments there is unheard of, and probably the kinds of numbers and the kinds of findings about what is happening with our Executive Branch in particular, but it is basically all Government here, and all parties, et cetera, would be scandalous in any other part of the world.

What is fascinating to me is why we are so accepting of that, and I do not know the answer to that one, either, but it is an intriguing paradox in a way.

Senator EXON. Just one last question, Mr. Chairman.

You said you were not an expert on the intricacies of international trade, and I guess few people are. I guess I am very much concerned about the fact that, taking agriculture as an example, we are in a posture today where the Trade Representative and the Secretary of Agriculture seemingly are willing to sacrifice the chances of a sound food plant in America on the basis of some elusive guarantee that is sometime in the future. The European Common Market would make substantial reductions in the very, very large subsidies that go to their food producers.

From your knowledge of the situation and the background and the history and given the fact that the economic community is going to become full fledged in 1992, do you think there is any realistic possibility that there is going to be such a dramatic change from all of those European countries that have had high agriculture subsidies as a part of their economy for a long, long time or can afford to make the changes that some leaders in this field in America seem to believe is likely to happen?

Mr. LEWIS. I am not an expert, but I would have to say that what you just said does strain credulity a little bit.

One other thing which this touches on somewhat that I am also noticing that is really fascinating and which actually Pat Choate talked about a little bit is the absence of a national trade policy in this country. I am looking at it in terms of the USTR because some people think that it is the closet thing to a multilateral agency that we have under the rubric of the United States Government that its main idea for trade has been to administer the GATT agreements for the last 30 to 40 years, the trade agreements acts that started back in the 1930's or the 1940's, I guess.

I do not know the answer to this, but the issue is whether the chief trade mechanism in your public policy apparatus is there to put forth interest around the globe for your nation, or is it to mediate disputes between nations and your nation? It is a fascinating thing.

One last thing about that that I really thoroughly enjoyed in this study is I talked to Wilbur Mills and Russell Long. Wilbur Mills' idea was to create a USTR. He went and talked to John Kennedy, and it went into the Trade Extension Act of 1962. I asked Wilbur Mills what he thought of USTR today. I asked him, is this one of your achievements? I mean, as an agency it has been there 28 years. Is it something you are proud of? He said it is one of the biggest disappointments in his public policy life.

The reason he wanted a USTR is because he felt the State Department and others were not handling trade as they should, and he said that what has happened to the USTR is they have done exactly what State was doing before that.

I talked to former Senator Russell Long, and, frankly, he said the same thing.

I do not know the answer. I am not sitting here advocating what it should be, but that is an issue that I find more and more when I talk to these people.

Senator EXON. Thank you, Mr. Lewis.

Thank you, Mr. Chairman.

The CHAIRMAN. You are right on target, Mr. Lewis. It was a frustration on behalf of the Congress back in 1962. I can hear Herman Talmadge right now. They have over in the State Department an African desk, an Australian desk, a European desk, and he would go down the list, and they do not have an American desk. So we have to get somebody to represent it.

Actually, that is why they were under the auspices of the Congress, really, as the U.S. Trade Representative. That is the characterization. Instead of representing our views and everything else of that kind, now they are representing the views opposed to that expressed by the Congress. That is a heck of an anomaly.

Do you make a report on your research?

Mr. LEWIS. We are going to issue our report in about 4 or 5 weeks, and I will be happy to make one available to the committee.

The CHAIRMAN. Very good. We would appreciate that.

What you bring into issue and the immediate concern is not just what they do after they leave the government but on the subject of patriotism whether they are working for the government or themselves. If they are running around as you characterize with calling cards and then think that they are worth a $1 million retainer 2 weeks after they leave, negotiating with the country then you are telling me that he must have done something of tremendous value to that country to think he is all of a sudden worth that amount.

Thank you very, very much, Mr. Lewis. We will keep the record open for further questions on behalf of my colleagues. I appreciate your appearance.

Mr. Allan Mendelowitz, the Director of Trade, Energy and Finance Issues of the General Accounting Office.

The committee's apologies to you, Mr. Mendelowitz. We had hoped to get you on much earlier here. I am sorry that we are so overcommitted in these closing days of the Congress. We will be delighted to hear from you. Your statement will be included in its entirety, and you can highlight it as you

STATEMENT OF ALLAN MENDELOWITZ, DIRECTOR, TRADE, ENERGY AND FINANCE ISSUES, GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY ELLIOTT SMITH, ASSISTANT DIRECTOR; AND RAY WYRSCH, GENERAL COUNSEL'S OFFICE

Mr. MENDELOWITZ. In light of the hour I would be happy to submit the statement for the record, introduce my colleagues, make a couple of brief statements, and then make myself available for questions.

On my right is Mr. Elliott Smith, who is our Assistant Director responsible for directing the work we did on implementation of the Foreign Agents Registration Act. On my left is Mr. Ray Wyrsch of our General Counsel's Office, who I have asked to accompany me to the table because there are obviously a lot of complex legal issues associated with the law.

Briefly, I would like to say that we have issued a number of reports dealing with the Foreign Agents Registration Act administration and representation by former high level government officials of foreign interests. What we found over the past decade and a half is continuing problems with implementation of the Foreign Agents Registration Act and its administration problems with getting all those who should be covered by the Act to register; completeness of registration information; timeliness of registration; and ability to enforce the provisions of the Act.

We made a number of recommendations which we believe would improve administration and enforcement of the Act, and we were very pleased to find that you have seen fit to include those recommendations in the legislation that you have introduced recently.

With that, we would be happy to try to answer any questions you may have.

[The statement follows:]

STATEMENT OF ALLAN I. MENDELOWITZ, DIRECTOR, TRADE, ENERGY, AND FINANCE ISSUES, NATIONAL SECURITY AND INTERNATIONAL AFFAIRS DIVISION, DEPARTMENT OF JUSTICE

Dear Mr. Chairman and Members of the Committee: I am pleased to be here to discuss our reports on foreign agent registration and on the extent to which former high-level federal officials represent foreign interests. I will discuss the conclusions of these reports and the recommendations we made.

In summary, in 1974, 1980, and 1990, we reported continuing problems in the Justice Department's administration of foreign agent registration. Despite our recommendations to correct these problems, people continue to act as foreign agents without registering, registered agents are still not fully disclosing their activities and are not filing required statements on a timely basis, and officials in the executive branch are still often unaware of the act's requirements. In addition, we found that the Justice Department's disclosure criteria were unclear.

Regarding the extent to which former high-level officials represent foreign interests, we reported in 1986(1) that during fiscal years 1980 through 1985, 76 former incumbents of high level positions had subsequently carried out foreign representational activities. We did not attempt to determine whether these activities violated any U.S. laws.

(1) Foreign Representation: Former High-Level Federal Officials Representing Foreign Interests (GAO/NSIAD-86-(1)75, July 1(1), 1986).

FOREIGN AGENT REGISTRATION

The specific statute governing foreign agent reporting requirements is the Foreign Agents Registration Act of 1938, as amended. The act requires foreign agents to disclose their representational activities, including any connections with foreign governments, foreign political parties, and other foreign principals, as well as the activities they perform on behalf of such principals in the United States.

Although the act at first appears to cover a very broad range of representational activities, it also includes many exemptions to the registration requirement, such as for diplomatic, humanitarian, commercial, and legal activities. Foreign agents who claim one of these exemptions are not required to notify the Justice Department that they are exempt from the registration requirement.

In 1974(2) and in 1980(3) we examined the administration of the Foreign Agents Registration Act and identified a number of continuing problems. We found the following:

—People were acting as foreign agents without registering.

(2)Effectiveness of the Foreign Agents Registration Act of 1938, as Amended, and Its Administration by the Department of Justice (GAO/B-177551, Mar. 13, 1974).

(3)Improvements Needed in the Administration of Foreign Agent Registration (ID-80-51, July 31, 1980).

—Registered agents were not fully disclosing their activities.

—Registered agents were not always filing required statements on a timely basis.

—Officials in the executive branch were often unaware of the act's requirements.

—The Justice Department was not making full use of its authority to enforce the act and related regulations.

To correct these problems, we recommended that the Attorney General:

—Establish a system that would bring all foreign agent files up to date and require that filings be made on time.

—Review supplemental statements to identify and revise all questions that confused the registrants, so as to reduce or eliminate the high incidence of insufficient responses.

—Assess the Registration Section's needs, including those for more staff, and establish a review system to ensure that the Department carries out its registration and enforcement activities effectively. We also recommended that the Attorney General seek legislative authority to:

—Require written notification to the Justice Department of all exemption claims prior to any agent activity.

—Give the Justice Department additional enforcement measures (such as administrative subpoena powers, a schedule of civil fines for minor violations, and increases in existing fines).

This year Senator Carl Levin asked us to update our 1980 report on the administration of the act. We reported in July(4) that we found these problems still remain, and we continue to support our prior recommendations.

The Department still had no information on exemptions and still had limited enforcement authority. In addition to reaffirming our 1980 recommendations, we further recommended that the Attorney General direct the Registration Unit to:

—Subpoena foreign agents to appear, testify, or produce records at administrative hearings.

(4)Foreign Agent Registration: Justice Needs to Improve Program Administration (GAO/NSIAD-90-250) July 30, 1990.

—Impose administrative fines for minor violations against those who, after being directly informed of their obligation to report, still fail to do so.

FORMER FEDERAL OFFICIALS REPRESENTING FOREIGN INTERESTS

We have also issued a number of reports on post-employment conflict of interest activities of former high-level federal officials in such areas as military contracting and foreign government representation. The post-employment conflict of interest laws restrict former officials from representing foreign and other interests before nonlegislative components of the federal government. The restrictions vary in duration from 1 year to a lifetime, depending on the officials' former relationship to the issues in question or to the place of representation.

Within the context of post employment conflict of interest concerns, I previously mentioned that during fiscal years 1980-1985, 76 of 2,557 former incumbents of high-level federal positions had subsequently carried out foreign representational activities. Information we collected showed that the 76 former incumbents included 18 White House officials, 22 other executive branch officials, 4 General Officers, 15 members of Congress and 17 senior congressional staff. We did not attempt to determine, however, whether their foreign representational activities violated any U.S. laws, and we did not make any recommendations in our report.

Mr. Chairman, this concludes my statement. I would be happy to try to respond to any questions you may have.

The CHAIRMAN. We thank you for that groundwork to point us in the right direction as to where the loopholes are. Without going into it, the Foreign Registration Act allows you to be the judge and jury as to whether you should even register at all. I think it is a terrible loophole, and it will be covered in our particular bill.

In your study, with respect to my going to work in a law firm, having been the Trade Representative, openly saying, for example, that I am not going to be involved in any of the subject matters of any of the trade negotiations I have been engaged in, but my partners in that law firm are.

How does the individual divorce himself from the work of his partners within a law firm?

Mr. MENDELOWITZ. Mr. Chairman, I think that the issue you are raising really is one of trying to police ethics with legislation versus attracting to public service people with great personal integrity. People who have within their own personal value systems sufficient integrity that they are concerned not only with the legality of what they are doing but also the appearance of impropriety, I think, have the wherewithal to avoid not just illegality but also the appearance of conflict of interest and impropriety.

Someone who comes to public office and is merely concerned with the narrow legality of what he is doing presents a problem.

The CHAIRMAN. Thank you very much.

Senator Exon.

Senator EXON. Thank you, Mr. Chairman. I have no questions.

The CHAIRMAN. We will have in the committee a further hearing on that particular bill and go into it in depth. We will keep the record open for questions.

Once again, the committee's apology for the tardiness and lack of attendance. There are just too many conflicts, and we are all late to other commitments.

We do appreciate the research and advice and counsel you have given us. Thank you very much for your appearance.

The committee will be in recess.

[Whereupon, at 1:00 p.m. the hearing was adjourned.]

[The following information was subsequently received for the record.]

October 30, 1990

The Honorable Ernest Hollings,
Chairman, Senate Commerce Committee, U.S. Senate, Washington, D.C. 20510
Dear Senator Hollings:

I am writing to clarify and correct the testimony given by Mr. Charles Lewis of the Center for Public Integrity before your Committee on September 27.

In his published testimony, Mr. Lewis asserts, inter alia, on page 8 that I am a registered foreign agent of the Canadian Sugar Institute, Nippon Steel Corporation, the Japan Iron & Steel Exporter's Association, Caribbean ISPAT Ltd., and the Embassy of Canada.

Because I knew that Mr. Lewis' statement was inaccurate, I had my law firm (Steptoe & Johnson) check with the Department of Justice regarding my registration status. The Department of Justice has confirmed that I am registered only as an agent for the Government of Quebec and the Canadian Sugar Institute. I am not registered as an agent for any other firm, foreign or domestic, nor is there any reason why I should be so.

I believe Mr. Lewis may have confused my situation regarding registration with that of my law firm, inasmuch as my law firm, which owns my consulting firm, has registered in the past as representing the two Japanese organizations and the Caribbean ISPAT, Ltd. However, my consulting firm, SJS Advanced Strategies is not an agent of those three entities (nor am I), and I would greatly appreciate your inserting in the formal proceedings of your September 27 hearings a statement to this effect.

Since my departure from the United States Government, after 30 years of service, I have made it a point to abide scrupulously by U.S. law with regard to the matter of FAPA registration. As a matter of personal and professional pride, I have endeavored to conduct myself as a trade consultant to the highest ethical standards. Hence, I was somewhat taken aback to read Mr. Lewis' testimony (on which I was never consulted by either Mr. Lewis or members of the Commerce Committee Staff) which implied that I was one of the "revolving door" types discussed by Mr. Lewis. As I believe you know, my service with the Federal Government dated from 1958 and was continuous from that time until I retired in 1988. There was certainly no "revolving door" in my situation. I spent my first thirty years of adult employment as a Foreign Service Officer, retired from the Government, and established my own firm and neither "revolved in" or "revolved out".

Finally, Mr. Chairman, I would like to point out that I have many more American clients than foreign clients, consistent with my objective of trying to get U.S. firms into the international market. However, I have no objection per se to working on behalf of foreign firms, provided their objectives are to liberalize world trade and provided my representation of them would in no way jeopardize America's economic and strategic national security. I have turned down several potentially lucrative representations where, in my judgment, America's interests would not be helped.

With every good wish.

Sincerely,

MICHAEL B. SMITH.

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